No. 583.

United States Circuit Court of Appeals
for the First Circuit.

October Term, 1906.

Sampson & Murdock Co.,
Complainant, Appellant,

v.

Seaver-Radford Co.,
Defendant, Appellee.

March 5, 1907.

MANDATE.

(Copy)

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

No. 583. Sampson & Murdock Co. v. Seaver-Radford Co.

Clerk's fees:

Filing record and docketing case	$5.00
3 Appearances @ .35 Filing .50	1.85
Filing withdrawal of appearance	.25
Filing brief [redacted]	5.00
Filing receipts for records and briefs, 3 @ .25	.75
Assignment .20; hearing .20	.40
Docket 1.00; filing .25; recording .20	1.45
Copy Opinion to file, 5.00; filing .25	5.25
Order for Mandate	.20
Mandate 5.00; copy Mandate to file 1.; filing .25	6.25
Calendars Oct.1905, Jan.1906, and April, 1906, 4 @ 1.	4.00
Clerk's fees including Mandate	$29.80
Printing Record	109.98
Attorney Fee	20.00
Total costs for Appellant	$159.78

On consideration whereof, It is now, to wit, November 23, 1905, here ordered, adjudged and decreed as follows: The decree of the Circuit Court is reversed; the case is remanded to that court for further proceedings; and the appellant recovers its costs of appeal.

Costs in this United States Circuit Court of Appeals, for which execution is to issue from said Circuit Court in favor of the said Sampson & Murdock Company, Complainant, and against the said Seaver-Radford Company, Defendant, are taxed at one hundred and fifty-nine dollars and seventy-three cents ($159.73).

You, therefore, are hereby commanded that such execution and further *proceedings be had in said cause,* in conformity with the aforesaid decree of this court,

as according to right and justice, and the laws of the United States, ought to be had, the said appeal *notwithstanding.*

Witness, *the Honorable* MELVILLE W. FULLER, *Chief Justice of the United States, the* fifth *day of* March, *in the year of our Lord one thousand nine hundred and* seven.

COSTS OF Appellant.

including Mandate *Clerk*	$ 29.80
Printing Record,	$109.83
Attorney	$ 20.00
	$159.73

JOHN G. STETSON.
Clerk of the United States Circuit Court of Appeals for the First Circuit.

United States of America, ss:

The President of the United States of America,

To the Honorable the Judges of the Circuit *Court*

L. S. *of the United States for the District of* Massachusetts,

GREETING:

Whereas, *lately in the* Circuit *Court of the United States for the District of* Massachusetts *, before you, or some of you, in a cause* ~~between~~ numbered and entitled,

No. 1937, Equity,

SAMPSON & MURDOCK COMPANY, Complainant,

v.

SEAVER-RADFORD COMPANY, Defendant,

the following Final Decree was entered on February 20, 1905:-

FINAL DECREE.

February 20, 1905.

This cause came on to be heard at the October Term, 1904, upon the exceptions to the master's report, and was argued by counsel for the respective parties; and now upon consideration thereof, to wit: February 20, 1905, It is ordered, adjudged and decreed, as follows, to wit: that the exceptions to the master's report are overruled and the master's report is confirmed.

And It is further ordered, adjudged and decreed that a perpetual injunction be issued against the defendant according to the opinion of this Court, filed February 2, 1905, herein.

It is further, ordered, adjudged and decreed that the complainant recover of the defendant its costs of suit, but no damages or profits, the recovery of the same having been duly waived by written waiver filed in this cause by complainant herein.

By the Court,

BENJAMIN H. BRADLEE,
Deputy Clerk.

583

Sampson & Murdock Co
v
Sam-Radford Co.

Withdrawal of
appearance of
Thomas Hunt
Atty
Gadsden Shaw & Fullerton
for appellees

Filed May 4, 1905
Merle Sutton
Clerk

GASTON, SNOW & SALTONSTALL

TELEPHONE MAIN 6146

WILLIAM A. GASTON
FREDERIC E. SNOW
RICHARD M. SALTONSTALL
THOMAS HUNT

LAWRENCE A. FORD
HENRY ENDICOTT, JR.
JOHN C. RICE

70 State Street

Boston

May 4, 1905.

John G. Stetson, Esq.,
Clerk U.S. Circuit Court of Appeals,
Post-office Building, Boston.

Dear Sir,-

In the case of Sampson & Murdock Company vs. Seaver-Radford Company, now pending in the Circuit Court of Appeals, please withdraw our appearances for the defendant.

Very truly yours,

Thomas Hunt
Gaston, Snow & Saltonstall

No. 583.

United States Circuit Court of Appeals

FOR THE FIRST CIRCUIT.

October Term, 1904.

APPEARANCE

OF

FOR

Filed ..... 190.....

APPEARANCE.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

NO. 583 OCTOBER TERM, 1904.

Sampson & Murdock Company,

Complainant, Appellant,

v.

Seaver-Radford Company,

Defendant, Appellee.

The Clerk will enter my appearance as Counsel for the appellee

Gaston, Snow & Saltonstall
Thomas H. Ford

MEMORANDUM. The signature of a member of the Bar of the United States Circuit Court of Appeals for the First Circuit is required.

No. 583

United States Circuit Court of Appeals

FOR THE FIRST CIRCUIT.

October Term, 190....

APPEARANCE

OF

FOR

Filed ..... 190.....

APPEARANCE.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

NO. 583 OCTOBER TERM, 1904

Sampson & Murdock Company

v.

Seaver-Radford Company

The Clerk will enter my appearance as Counsel for the Sampson & Murdock Co.

Samuel J. Elder

MEMORANDUM. The signature of a member of the Bar of the United States Circuit Court of Appeals for the First Circuit is required.

CIRCUIT COURT OF THE UNITED STATES,

District of Massachusetts.

IN EQUITY.

No.1937.

SAMPSON & MURDOCK COMPANY,
Complainant,

v.

SEAVER-RADFORD COMPANY,
Defendant.

TRANSCRIPT OF RECORD.

No 583 Sampson & Murdock Company
Complainant Appellant
vs
Seaver-Radford Company
March 25, 1915. Record filed and
case docketed
[illegible]
Clerk

TABLE OF CONTENTS.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1903. 4

No. ~~527~~. 583. Sampson & Murdock

~~J. STEVENS ARMS & TOOL~~ COMPANY,
~~DEFENDANT~~ Complainant, APPELLANT,

v.

Seaver-Radford Company,

~~WILLIAM H. DAVENPORT ET AL.~~,
~~COMPLAINANTS~~ Defendant, APPELLEES.

TRANSCRIPT OF RECORD OF CIRCUIT COURT. 5

[FILED IN CIRCUIT COURT OF APPEALS MARCH ~~15~~ 25, 1904.]

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS.

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday ~~the twentieth day~~ of October, being the eighteenth day of October, in the year of our Lord one thousand nine hundred and ~~three~~ four.

Before THE HONORABLE FRANCIS C. LOWELL,
District Judge.

No. 1937 Equity.

SAMPSON & MURDOCK COMPANY,
Complainant,

v.

SEAVER-RADFORD COMPANY,
Defendant.

The Bill of Complaint in this cause was filed in the clerk's office on the twenty third day of February, A.D. 1904, and was duly entered at the February Term of this Court, A.D. 1904, and is in the words and figures following:

TRANSCRIPT OF RECORD OF CIRCUIT COURT.

UNITED STATES OF AMERICA,
District of Massachusetts,ss.

At a Circuit Court of the United States for the First Circuit begun and holden at,Boston, within and for the District of Mas-

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[Filed February 23, 1904.]

To the Honorable the Judges of the Circuit Court of the United States for the First Circuit in the District of Massachusetts:

Sampson & Murdock Company, a corporation organized under the general laws of the State of Rhode Island, brings this bill of complaint against Seaver-Radford Company, a corporation organized under the general laws of the State of Massachusetts, and having its usual place of business at Boston in said State and District.

Thereupon your orator complains and says:

1. That on or before the 29th day of June, 1903, and prior to the date of the publication thereof in this or any foreign country the firm of Sampson, Murdock & Company, of Boston, the predecessors in business of your orator, deposited in the mails within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of a certain book entitled "The Boston Directory", containing the city record, a directory of the citizens' business directory and street directory, with map No. XCIX for the year commencing July 1, 1903, in order to copyright the same, and claimed said copyright as authors and proprietors; and that they deposited in like manner the sum of fifty cents for coypright fees, and that thereupon, on the 11th day of July, 1903, and also before the date of publication in this or any foreign country, deposited in the mails within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two printed copies of such copyright directory; and that the said title so deposited was duly recorded by the Librarian of Congress upon the said 29th day of June, 1903, whereby they became entitled to the copyright upon said book under the laws of the United States.

2. That on the first day of October, 1903, the said firm of Sampson, Murdock & Company for a valuable consideration and by an instrument in writing, a copy of which is hereto annexed, conveyed the said copyright to the complainant here-

(Gal I-2) T-3

in, and that the complainant by the said conveyance became and has ever since been and now is the sole owner of said copyright and of the exclusive rights thereby conferred under the laws of the United States.

3. That the two copies of the said book deposited as above set forth were printed from type set within the limits of the United States, or from plates made therefrom.

4. That the said Sampson,Murdock & Company and the complainant as their assignee and successor in the business, have given notice of the said copyright by inserting in the several copies of every edition published on the title page thereof the copyright notice required by law, in the following words, to wit: "Copyright 1903, by Sampson,Murdock & Co."

5. That the defendant corporation after the recording of the title of the said book and the depositing of two copies thereof as provided by the laws of the United States, and within the term of copyright limited, and without the consent of the proprietors of the said copyright in writing or otherwise, has printed and is about to publish and sell or expose for sale, many copies of a certain book entitled, "The 1904 City Directory of Boston", each of which said copies is in whole or in part a copy of the directory compiled and copyrighted by the said Sampson,Murdock & Co.

6. That such copying and threatening to publish and sell the same is in violation of the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the book duly copyrighted to the said Sampson, Murdock & Company, the copyright of which has been assigned by them and is now held by your orator as aforesaid.

Wherefore your orator prays:

1. That the said defendant, the Seaver-Radford Company, may be compelled by a decree of this Court to account for and pay over to your orator the damages that your orator has sustained by the said unlawful acts of the said defendant, and that the said defendant, the Seaver-Radford Company, its officers, attorneys, agents and servants may be enjoined and

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restrained by the decree and injunction of this Court from completing, publishing, selling or offering for sale its said directory, and that it may be in like manner enjoined and restrained during the pendency of this suit, and that your orator may have such other and further relief as the equity of the case may require.

And to this end your orator prays your Honors to grant unto it not only writs of injunction conformable to the prayers of this bill, but also a writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the defendant, the said Seaver-Radford Company, commanding it to appear and answer to and abide by such order and decree hereafter as to this Court may seem required by the principles of equity and good conscience.

SAMPSON & MURDOCK COMPANY,
by Wm.E.Murdock,Pres.

UNITED STATES OF AMERICA,
State and District of Massachusetts,
County of Suffolk,ss.

Personally appeared before me, at Boston, this twenty third day of February,1903,William E.Murdock and made oath that he is the president of the complainant corporation; that he has read the foregoing bill of complaint and understands the contents thereof, and that the same is true.

(Seal) BENJ.H.BRADLEE,
Notary Public.

rule

Trans. Bill of Sale Pub. of Conflicts for copyright only

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COPY OF BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS;

That we, William E.Murdock, Charles D'W. Marcy and George R.Murdock, all of the City of Boston, in the County of Suffolk and Commonwealth of Massachusetts, as partners doing business under the name of Sampson,Murdock & Company,in consideration of four hundred thousand dollars ($400,000) paid by the Sampson & Murdock Company, a corporation organized under the General Laws of the State of Rhode Island, the receipt whereof is hereby acknowledged, do hereby bargain, sell and deliver unto the said Sampson & Murdock Company the following goods and chattels, viz.:

All map plates, cuts, printing material, books, copyrights, contracts, office furniture and other personal property of every description, including forty thousand dollars ($40,000) in cash, (but not including the receipts for goods already sold or bills and accounts receivable or cash in excess of forty thousand dollars ($40,000),wherever situated belonging to the said firm of Sampson,Murdock & Company and used by them in connection with their business as publishers and copyright owners of the New England Business Directory and Gazetteer, Boston Business Directory, Rhode Island State Register and Directory, Providence House Directory, Providence Register & Business Directory, and Directories for the following named cities and towns: Providence, Pawtucket, Central Falls, Newport, Woonsocket, Westerly, East Providence, Bristol, Warren, Barrington and Pawtuxet Valley in Rhode Island; Albany, Rensselaer, Troy, Watervliet, Cohoes, Waterford, Syracuse and Oswego in New York; Manchester in New Hampshire; Amesbury, Attleboro, Billerica, Boston, Chelmsford, Dracut, Essex, Fall River, Gloucester, Lawrence,Lowell, Lynn,Malden,Manchester,Newburyport,Rockport, Taunton, Tewksbury, Tyngsboro and Westford in the Commonwealth of Massachusetts, together with the good will of said business carried on by said Sampson,Murdock & Company.

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Said personal property hereby transferred being more particularly shown in a schedule thereof hereto annexed and marked "Exhibit A".

To Have and to Hold, all and singular the said goods and chattels to the said Sampson & Murdock Company, its successors and assigns, to its own use and behoof forever.

And we hereby covenant with thegrantees that we are the lawful owners of the said goods and chattels; that they are free from all encumbrances, that we have good right to sell the same as aforesaid; and that we will warrant and defend the same against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, we, the said William E. Murdock, Charles D'W.Marcy and George R.Murdock as copartners as aforesaid, have hereunto set our hands and seals, this first day of October in the year one thousand nine hundred and three.

~~(Signed)~~ WILLIAM E.MURDOCK.
CHARLES D'W.MARCY.
GEORGE R.MURDOCK.

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Signed, sealed and delivered
in presence of
~~(Signed)~~
J.Frank Hilliker.

A true copy:
Attest: GEORGE R. MURDOCK,
Secretary.

rule

At the same term the following Answer was filed:

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Answer

DEFENDANT'S ANSWER.
[Filed May 2,1904.]

And now comes the respondent in the above entitled cause and for answer to the complainant's bill says as follows:

First: The respondent is ignorant as to the truth of the facts alleged in those paragraphs of the complainant's bill which are numbered one, two, three and four, so that it can neither admit nor deny the same, but leaves the complainant to prove them so far as they may be material.

Second: Each and every allegation contained in that paragraph of the complainant's bill numbered five, the respondent specifically denies.

Third: The respondent is advised and believes that that paragraph of the complainant's bill numbered six does not contain any allegation of fact, but only states a conclusion of law, and the accuracy and correctness of that conclusion of law the respondent denies.

Fourth: The respondent further answering says that it has compiled a book entitled "1904 City Directory of Boston", which had neither been printed nor published at the time of the filing of the bill in this cause on February 23,1904, but was published long after that time, that is to say, on or about April 28,1904:

That said book differs from "The Boston Directory" in name, shape, size, typography, style of binding and in arrangement, and cannot be confused with or mistaken for it:

That the respondent's said book has been compiled by it by means of original investigation and research, with much labor and by employing large numbers of persons, and at an expense of some forty thousand dollars($40,000).

Fifth: And the respondent further answering says that in the compilation and preparation of its said book it has made no use of the complainant's book except such as it was advised and believed, and still believes, is entirely lawful, having used it only for the purpose of directing itself to persons whose names are given in it, and of finding out persons upon whom it was desirable to call,and that even

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such use as was made in this way was limited to a small proportion of the names contained in either book.

Sixth: The respondent, further answering, specifically denies that any copyright of the complainant has been infringed by it.

Seventh: The respondent, further answering, specifically denies that the complainant has suffered, or will suffer, any damage by reason of any infringement by the respondent, and alleges that any injury or loss which it may suffer, if any, will be due solely to fair and lawful competition, or to the fact that the respondent has produced and published a directory later in date and superior in all respects to that of the complainant, and will not constitute a legal damage.

Eighth: The respondent further answering says that the complainant's book was of temporary and ephemeral value only, and had been on the market for more than nine months before the publication of the respondent's book,-that is to say, since July 13,1903; that at the time of the publication of the respondent's book, April 28,1904, substantially the entire edition of the complainant's book had been sold, there were few, if any, copies thereof remaining available for sale, and there was no sale for such as did remain, if any, which were therefore of no value.

By its Solicitors,

GASTON, SNOW & SALTONSTALL.
THOMAS HUNT.

Rule

summary

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(Gal T.4)

Also at the same term the following Replication was filed:

REPLICATION.
[Filed May 17,1904.]

The Replication of Sampson & Murdock Company, Complainant, to the Answer of Seaver-Radford Company, Defendant.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says, that it will aver and prove its said bill to be true,certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this,that any other matter or thing whatever in said answer contained, material or effectual in the law to be replied unto,confessed and avoided,traversed or denied,is true.

All which matters and things this repliant is and will be ready to aver, maintain and prove; and humbly prays as in and by its said bill it has already prayed.

By its solicitor,
ALEX. P. BROWNE.

rule

Also at the same term the following Order of Reference to a Master was entered, the Honorable Clarence Hale, District Judge for the District of Maine, duly assigned to hold said Circuit Court, sitting:

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ORDER OF REFERENCE TO A MASTER.
May 17,1904.

HALE,J. The cause is referred to John G. Stetson, Esquire, Master, upon the bill,answer and replication, to hear the evidence, find the facts and report to the Court his findings of fact, his conclusions of law and such portions of the evidence as either party may request.

By the Court,

L. C. TUCKER,
Deputy Clerk.

Also at the same term the following Master's Report was filed:

Circuit Court of the United States,

DISTRICT OF MASSACHUSETTS.

No. 1937, Equity.

SAMPSON & MURDOCK COMPANY,
COMPLAINANT,

v.

SEAVER-RADFORD COMPANY,
DEFENDANT.

MASTER'S REPORT.

[Filed in Circuit Court October 15, 1904.]

To the Honorable the Judges of the Circuit Court:

I submit the following statement of abbreviations and definitions of terms used in this report and in the schedules thereto annexed:

Abbreviations and Definitions.

C. D. Complainant's Directory, — the complainant's copyrighted Boston Directory, 1903, — alleged to be infringed.

D. D. Defendant's Directory, — the defendant's 1904 City Directory of Boston, — alleged to infringe.

Check Books. Sections or parts into which the defendant divided the complainant's general directory and its business directory for use in front-checking and drawing questions.

Front Checks. The black pencil marks which the defendant made in the check books to indicate that it had obtained information as to the names so front-checked by its original house-to-house canvass.

Blue Dots. The blue pencil dots which the defendant made in the check books to indicate that questions were to be drawn upon the names so blue-dotted.

Questions. The copies made of the names, etc., which the defendant had blue-dotted in the check books to be sent out for verification or otherwise.

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10 X2 Transcribed by Mrs. Florence Cook

C. D. (9)414. This arrangement of letters and figures in the Master's schedules denotes, Complainant's Directory, the number of the check book and the page on which a given name, etc., is to be found.

D. D. 497. The number indicates the page in the defendant's directory where a given name, etc., is to be found.

On May 17, 1904, this cause was referred to me as master upon the bill, answer and replication, to hear the evidence, find the facts and report to the court my findings of fact, my conclusions of law and such portions of the evidence as either party may request.

Mr. Alexander P. Browne represents the complainant and Mr. Thomas Hunt represents the defendant in the proceedings before me.

I have heard the evidence offered by each party in the usual order. This evidence was taken stenographically by stenographers furnished by Mr. Browne, and copies of the evidence have been delivered to counsel for each party and to me. I have heard counsel for each party, and I now report my findings of fact and conclusions of law, and will report such portions of the evidence as either party may request.

FINDINGS OF FACT.

Master's Finding 1. The following allegations of the complainant's bill of complaint are true, namely:

1. That on or before the twenty-ninth day of June, 1903, and prior to the date of the publication thereof in this or any foreign country, the firm of Sampson, Murdock & Company, of Boston, the predecessors in business of your orator, deposited in the mails within the United States, addressed to the Librarian of Congress at Washington, District of Columbia, a printed copy of the title of a certain book entitled "The Boston Directory", containing the city record, a directory of the citizens' business directory and street directory, with map No. XCIX. for the year commencing July 1, 1903, in order to copyright the same, and claimed said copyright as authors and proprietors; and that they deposited in like manner the sum of fifty cents for copyright fees, and that thereupon, on the eleventh day of July, 1903, and also before the date of publication in this or any foreign country, deposited in the mails within the

United States, addressed to the Librarian of Congress at Washington, District of Columbia, two printed copies of such copyright directory; and that said title so deposited was duly recorded by the Librarian of Congress upon the said twenty-ninth day of June, 1903, whereby they became entitled to the copyright upon said book under the laws of the United States.

2. That on the first day of October, 1903, the said firm of Sampson, Murdock & Company, for a valuable consideration and by an instrument in writing, a copy of which is hereto annexed [that is, annexed to complainant's bill], conveyed the said copyright to the complainant herein, and that the complainant by the said conveyance became and has ever since been and now is the sole owner of said copyright and of the exclusive rights thereby conferred under the laws of the United States.

3. That the two copies of the said book deposited as above set forth were printed from type set within the limits of the United States, or from plates made therefrom.

4. That the said Sampson, Murdock & Company, and the complainant as their assignee and successor in the business, have given notice of said copyright by inserting in the several copies of every edition published on the title page thereof the copyright notice required by law, in the following words, to wit: "Copyright 1903, by Sampson, Murdock & Co."

MASTER'S FINDING 2. The copyright in suit and the complainant's title to the same are good and valid.

MASTER'S FINDING 3. The defendant company within the term of the complainant's copyright and without the consent of the owners thereof has printed, published, exposed for sale and sold many copies of a book entitled "The 1904 City Directory of Boston", referred to in this report as Defendant's Directory, the complainant's copyrighted directory being referred to as Complainant's Directory.

MASTER'S FINDING 4. The defendant's directory differs from the complainant's directory in shape, size, style of type, and arrangement, containing three columns on each page instead of two, and on these accounts is not liable to be mistaken for the complainant's directory. The complainant's directory is entitled "Boston Directory 1903", and the defendant's directory is entitled "1904 City Directory of Boston".

MASTER'S FINDING 5. In obtaining material for its directory the defendant, by its agents and employés, made an original and substantial house-to-house and office-to-office canvass of the city of Boston.

MASTER'S FINDING 6. After making its original canvass the defendant by its agents and employés divided a copy of the complainant's directory into sections called "check books" and front-checked, that is, checked in front of each name in black pencil upon the pages of these check books the names which it had obtained by its original canvass, except that it did not check all the names of barbers, hairdressers, laborers and persons having no business stated in complainant's copyrighted directory. Having thus front-checked names obtained by its original canvass, the defendant by its agents and employés blue-dotted in the check books such names as its agents and employés desired to draw questions upon, and having drawn such questions sought to verify the information substantially copied from the check books by going to original sources of information; but in many instances, particularly set forth in Master's Findings 7, 10, 11 and 12, the defendant by its agents and employés failing to make such verification transferred to its directory the information contained in the complainant's copyrighted directory.

MASTER'S FINDING 7. The defendant transferred to its directory from complainant's copyrighted directory the twenty-nine (29) names and the information connected therewith shown in Master's Schedule A, annexed to this report. These names are all blue-dotted in the check books into which complainant's copyrighted directory was divided, indicating that questions were drawn upon them, but an actual verification of such questions from original sources of information was impossible as the persons represented by these names died at various times from March 3 to July 18, 1903, and were dead at the times when the attempted verifications, if any, were made.

MASTER'S FINDING 8. The defendant transferred to starred pages 50 and 51 of its directory from pages 733 to 734 of com-

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plainant's copyrighted directory the thirteen (13) names and the information connected therewith shown in Master's Schedule B. None of these names were obtained on the original canvass as none of them are front-checked, and questions were not drawn upon them as none of them are blue-dotted. The persons represented by seven of those names moved from the residences or places of business given in both directories before the defendant commenced its original canvass.

MASTER'S FINDING 9. The defendant transferred to all parts of its general directory from the complainant's copyrighted directory many names and information connected therewith which it did not obtain by its original canvass, as such names are not front-checked in the check books, and which it did not obtain by information from original sources on questions drawn upon such names and information connected therewith appearing in complainant's copyrighted directory as such names are not blue-dotted in the check books.

This finding is supported by a comparison of the names on many two consecutive pages selected at random from the check books, so called, with the same names as they appear in the defendant's directory. Master's Schedule C illustrates this as to pages 81–82, 181–182, 281–282, 381–382 and 481–482. On these ten pages are shown fifteen such transfers.

MASTER'S FINDING 10. The defendant transferred to its directory from complainant's copyrighted directory the forty-six (46) names and the information connected therewith shown in Master's Schedule D, annexed to this report. These names are all blue-dotted in the check books into which complainant's directory was divided, indicating that questions were drawn upon them, but an actual verification of said questions from original sources of information was impossible as the persons represented by these names moved from the places of business or from the residences shown in both directories, at various times previously to July 12, 1903, some of them one or two years previously, and all but three, (28) Horstmeier, (38) Owen and (42) Wallberg, previously to July 1, 1903, and all of them

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had so removed previously to the times when the attempted verifications, if any, were made.

MASTER'S FINDING 11. In many instances the defendant has inserted in its general directory the names of persons and information connected therewith in two forms. In one form, it has copied the names and information connected therewith from the complainant's copyrighted directory; in the other form, the names and information connected therewith were obtained from some other source. Master's Schedule E contains thirty-six (36) such instances of double insertion of names and information connected therewith. As to each person included in this schedule, the first line shows the name and information (business address and residence) as they appear in complainant's copyrighted directory; the second line shows them as they appear in defendant's directory copied from complainant's copyrighted directory; and the third line shows them as they appear the second time in defendant's directory from information obtained from some other source. None of these names were front-checked in the check books, and all of them were blue-dotted, indicating that the defendant did not obtain them and the information connected therewith by its original canvass, and that questions were drawn upon them for verification. The complainant introduced evidence tending to show that there were errors in these names or in the information connected therewith as the names and information appeared in its copyrighted directory, which errors the defendant copied into its directory, and that these names and information connected therewith are correctly given by the defendant in the second form in which they appear in its directory. That the defendant obtained such information, namely, that appearing in the second form in its directory, from original sources and upon special inquiry, corroborates complainant's evidence as above stated; and I find as a fact that in the thirty-six (36) instances enumerated in Master's Schedule E there were errors in the names or information, or both, as they ap-

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peared in the complainant's copyrighted directory, and that the defendant copied these errors into its directory.

MASTER'S FINDING 12. The complainant inserted in its list of Public Offices, Halls, Blocks, etc., in its copyrighted directory, on page 66, the fictitious name and location, McKinley Hall, 24 W. Concord. This was a trap intentionally set to catch copyists, and the defendant fell into it, transferring to its list of Office Buildings, Halls, Blocks, Theatres, and Public Buildings, on page 173 of its directory, this fictitious name and location, McKinley Hall, 24 W. Concord St.

MASTER'S FINDING 13. The complainant inserted in its Business Directory, making a part of its copyrighted directory, on page 1969, under the title of Boots and Shoes (Retail Dealers), the fictitious name and location, Rogers Robert L. 312 Maverick, and on page 2151, under the title of Hairdressers, the fictitious name and location, Jones G. W. 1650, Dorchester av. The defendant copied both these fictitious names and locations from complainant's copyrighted directory and inserted them in its Business Directory, making a part of its 1904 City Directory of Boston, Rogers Robert L. 312 Maverick, E. B., on page 1774, under the title of Shoe Dealers, and Jones G. W., 1650 Dorchester av. Dor., on page 1613, under the title of Barbers.

MASTER'S FINDING 14. The defendant copied the following name and residence into its general directory, making a part of its 1904 City Directory of Boston, from complainants copyrighted directory:

C. D. (58)	179.	Thomas Leo B. pastor Stoughton-st Baptist church, Dor. h. 31 Stoughton, do.
D. D.	1**.	Thomas Leo B. pastor, Stoughton st Baptist church Dor res. 31 Stoughton, do.
C. D. (3)	1994.	Thomas Leo B. (B), 31 Stoughton
D. D.	1633	(Business Directory, under the heading Clergymen). Thomas Leo B. (B.) 31 Sumner, Dor.

The correct residence is 31 Sumner, Dorchester.

This name is blue-dotted in check book 58 from complainant's general directory and is not front-checked in check book 3 from

complainant's business directory, both indicating that the defendant did not obtain this name and residence by its original canvass and that questions were drawn upon this name for verification from original sources of information. The defendant did obtain the correct residence, 31 Sumner, Dorchester, and inserted it in its business directory under the title, Clergymen, as shown by the fourth line above, but copied into its general directory the incorrect address, 31 Stoughton, Dorchester, as shown by the first and second lines.

MASTER'S FINDING 15. The defendant copied the following names and information into its Business Directory, making a part of its 1904 City Directory of Boston, from complainant's copyrighted directory:

(1)

Business heading in both directories, ARCHITECTS.

C. D. (1) 1949. Briscoe Maurice B. 120 Boylston
D. D. 1604. Briscoe Maurice B. 120 Boylston
D. D. 1604. Biscoe Maurice B. 110 Boylston

This name is blue-dotted in check book 1, Business, and the correct spelling of the name and the correct business location were obtained by defendant as shown in the third line above and entered, but the defendant copied into its directory the incorrect spelling and the incorrect location from complainant's copyrighted directory as shown in the first and second lines.

(2)

Business headings, BOOT & SHOE DEALERS in complainant's and SHOEMAKERS in defendant's directory.

C. D. (2) 1966. Masaree Arthur, 97 W. Concord
D. D. 1776. Masaree Arthur, 97 W. Concord
" 993 (General Directory). Macaree Arthur, cobbler, 99 W. Concord, res. 43 Langdon, Rox.

This name is not front-checked in check book 2, Business, indicating that it was not obtained on original canvass. The correct spelling of the name and the correct business location were obtained by defendant as shown by the third line above, but the defendant copied into its directory the incorrect spelling and the incorrect location from complainant's copyrighted directory as shown in the first and second lines.

T-19 (Cont'd)

(3)

Business heading in both directories, GROCERS.

C. D. (6) 2046. Kovitzky Simon, 12 Morton

D. D. 1672. Kovitzky Simon, 12 Morton

" 912s (General Directory). Koritzky Simon, crockery and coal agent, 12 Morton, res. do.

The defendant obtained the correct spelling of this name and inserted it in his general directory as appears by the third line above, but copied into its business directory the incorrect spelling as shown by the first and second lines.

(4)

Business heading in both directories, LEATHER DEALERS.

C. D. (8) 2086. Magoun Leather Co. 59 High

D. D. 1708. Magoun Leather Co. 59 High

This company moved from 59 High Street before defendant's original canvass. The name is blue-dotted in check book 33 from complainant's general directory, is not front-checked in check book 8 from complainant's business directory, and does not appear in defendant's general directory. This name and location were copied by the defendant into its business directory from complainant's copyrighted directory.

(5)

Business heading in both directories, REAL ESTATE AGENTS.

C. D. (11) 2151. Jewell Albert L. 209 Wash. rm. 21

D. D. 1762. Jewell A. L. 209 Wash. rm 21

" 861 (General Directory). Jewell Albert L. real estate, 19 Congress, rm. 95, tel. res. at Brookline

The defendant obtained the correct business location of this man and inserted it in its general directory as appears by the third line above but copied into its business directory the incorrect location from complainant's copyrighted directory as shown by the first and second lines.

(6)

Business heading in both directories, RESTAURANTS.

C. D. (11) 2110*. Patten F. E. Mrs. 2280 Dorch. av.

D. D. 1766. Patten F. E. Mrs. 2280 Dorchester av. Dor.

" 1285 (General Directory). Patten F. E. lunch room, 2270 Dorchester av. Dor. res. 2260 do.

T-20

18 ~~20~~ Transcript of Record Plaintiff

This name is not front-checked in check book 11, Business. It is blue-dotted in check book 44, where the correct location is given. The defendant obtained the correct location and inserted it in its general directory as appears by the third line above, but copied the incorrect location into its business directory from complainant's copyrighted directory as shown by the first and second lines.

(7)

Business heading in both directories, TEACHERS, ELOCUTION.

C. D. (12) 2139. Warren Edward, 176 Tremont
D. D. 1795. Warren Edward, 176 Tremont

This man moved from 176 Tremont before defendant's original canvass. The name is blue-dotted in check book 60 from complainant's general directory, is not front-checked in check book 12 from complainant's business directory and does not appear in defendant's general directory. The defendant copied this name and location into its business directory from complainant's copyrighted directory.

(8)

Business heading in both directories, TEACHERS, MUSIC.

C. D. (12) 1240*. Byrnes Alva, 162 Boylston
D. D. 1796. Byrnes Alva, 162 Boylston
" 393 (General Directory). Byrnes Alma, music teacher, res. Union ter. J. P.

This name is front-checked in check book 6 from complainant's general directory and appears in complainant's and in defendant's general directory with the correct spelling, Alma. It is also front-checked in check book 12 taken from complainant's business directory where it appears with the incorrect spelling, Alva. The defendant obtained the correct spelling, Alma, either from an original source or from complainant's general directory and inserted it in its general directory as shown by the third line above but copied the incorrect spelling, Alva, into its business directory from complainant's copyrighted directory as shown by the first and second lines.

MASTER'S FINDING 16. Many instances of similarity in the forms of entry of special names and information in the two directories are indications of a general system of copying by the defendant into its directory from complainant's copyrighted directory, of which instances the following are illustrations:

(1)

C. D. (3) 170. Belknap George E. chairman Nautical Training School Commission, 110 State House, h. at Brookline

D. D. 292. Belknap George, chairman, Nautical Training School Commission, 110 State House, res. at Brookline

(2)

C. D. (4) 228. Bradlee Benjamin H. deputy clerk, U. S. circuit court, 112 P. O. bldg. h. at Newton Centre

D. D. 339. Bradlee Benjamin H. dep. clerk, U. S. circuit court, 112 P. O. bldg. res. at Newton Centre

(3)

C. D. (4) 228. Bradlee Roger W. clerk, 40 Water, rm. 15, bds. Blue Hill av. cor. Austin, Mat.

D. D. 339. Bradlee Roger W. clerk, 40 Water, rm. 15, res. Blue Hill av. cor. Austin, Mat.

(4)

C. D. (45) 1442. Pennock A. N. clockmaker, 147 Tremont, h. 250 Mass. av.

D. D. 1295. Pennock A. N. clockmaker, 147 Tremont, res. 250 Mass. av.

(5)

C. D. (45) 1442. Pennock F. G. foreman, 394 Atlantic av.

D. D. 1295. Pennock F. G. foreman, 394 Atlantic av.

(6)

C. D. (45) 1442. Pennock Artemas S. pres. 442 Tremont bldg. h. at S. Braintree

D. D. 1295. Pennock Artemas S. pres. 442 Tremont bldg. res. at S. Braintree

(7)

C. D. (59) 1798. Trowbridge Alexander H. clerk, U. S. circuit court, 112 P. O. bldg. h. at Brookline

D. D. 27**. Trowbridge Alexander H. clerk, U. S. Circuit Court, 112 P. O. bldg. res. at Bro.

T-22

20 22 Transcribed from the original book.

(8)

C. D. (59) 1798. Trowbridge Herbert W. clerk, Custom House and accountant, 82 Devonshire, rm. 28, h. at Stoughton

D. D. 27**. Trowbridge Herbert W. clerk, Custom House, and accountant, 82 Devonshire, rm. 28, res. at Stoughton

CONCLUSIONS OF LAW.

FIRST: The complainant is entitled to an injunction against the defendant from using or selling or offering for sale any copy of its 1904 City Directory of Boston so long as it contains

(1) in its list of Office Buildings, Halls, etc., on page 173, the name and location McKinley Hall, 24 W. Concord St.,

(2) in its general directory the names and information connected therewith set out in Master's Findings 7, 8, 9, 10, 11 and 14,

(3) in its general directory the names and the information referred to in Master's Finding 9 as not front-checked in the check books and so not obtained by original canvass, and not blue-dotted and so not obtained from original sources upon questions drawn, but which are not included in Master's Schedule C, and

(4) in its business directory the fictitious names and locations Rogers Robert L. 312 Maverick, on page 1969, and Jones G. W. 1650 Dorchester av., on page 2151, and the sixteen (16) names and information in the form described in Master's Findings 15 and 15A.

SECOND: The complainant is entitled to a decree for an accounting for profits derived by the defendant from, and by reason of, its incorporating in its 1904 City Directory of Boston the names and information specified in the above first conclusion of law in paragraphs (1), (2), (3) and (4), and from the manufacture and sale of said directory in so far as such profits are attributable to such incorporating therein of said names and information.

Respectfully submitted,

JOHN G. STETSON, *Master.*

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MASTER'S SCHEDULE A, Finding 7.

Deaths Before Attempted Verifications.

(1)

C. D. (2) 111. Armstead, L. H. clerk, 13 Franklin, h. at Waltham
D. D. 242. Armstead, L. H. clerk, 13 Franklin, res. at Waltham

(2)

C. D. (9) 414. Cooke George P. designer, 110 Summer, rm. 21, h. at Newtonville
D. D. 497. Cooke George P. designer, 110 Summer, rm. 21, res. at Newtonville

(3)

C. D. (10) 437. Crane Charles F. clerk, 77 Wash. north, h. at Camb.
D. D. 517. Crane Charles F. clerk, 77 Wash. north, res. at Camb.

(4)

C. D. (12) 517. Dexter George, banker and broker, 10 State, h. 1148 Adams, L. M.
D. D. 584. Dexter George, banker and broker, 10 State, res. 1148 Adams, L. M.

(5)

C. D. (17) 653. Fitzgerald William J. shipper, 64 Wash. bds. 68 Moulton, Chsn.
D. D. 700. Fitzgerald, William J. shipper, 64 Wash. res. 68 Moulton, Chsn.

(6)

C. D. (19) 719. Gearin Stephen J. boat joiner, h. 274 E. Cottage, Dor.
D. D. 37. Gearin Stephen J. boat joiner, res. 271 E. Cottage, Dor.

(7)

C. D. (19) 723. Gerrish George H. h. 73 Kendall
D. D. 40. Gerrish George H. res. 73 Kendall, Rox.

(8)

C. D. (20) 778. Greenleaf David L. clerk, 55 Blackstone, bds. at Everett
D. D. 88. Greenleaf David L. clerk, 55 Blackstone, res. at Everett

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Twenty-one (21) other instances of deaths before attempted verifications are omitted in printing this schedule; subsequently printed commencing with page

MASTER'S SCHEDULE B, Finding 8.

Names Neither Front-Checked nor Blue-Dotted.

(1)

C. D. (19) 733. Gilman Charles B. mechanical engineer, h., 3239 Wash. J. P.
D. D. 50*. Gilman Charles B. mechanical engineer, res. 3239 Wash. J. P.

— Ok as sold in proof.

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22 ~~24~~ Trans. H. & Rec. & B. to C.

(2)
C. D. (19) 733. Gilman Caribel, teacher, bds. 5 Alveston, J. P.
D. D. 50*. Gilman Caribel, teacher, res. 5 Alveston, J. P.

(3)
C. D. (19) 733. Gilman Edward C. foreman, h. 15 Charles, Dor.
D. D. 50*. Gilman Edward C. foreman, res. 15 Charles, Dor.

(4)
C. D. (19) 733. Gilman Grace M. teacher, bds. 5 Alveston, J. P.
D. D. 50*. Gilman Grace M. teacher, res. 5 Alveston, J. P.

(5)
C. D. (19) 733. Gilman Joseph M. salesman, 103 Medford, Chsn. h. at Greenwood
D. D. 50*. Gilman Joseph M. salesman, 103 Medford, Chsn. res. at Greenwood

(6)
C. D. (19) 733. Gilman Louis J. h. 1 Oakville av. Rox.
D. D. 50*. Gilman Louis J. res. 1 Oakville av. Rox.

(7)
C. D. (19) 733. Gilman William H. boots and shoes, 94 Cambridge, h. 27 S. Russell
D. D. 50*. Gilman William H. boots and shoes, 94 Cambridge, res. 27 S. Russell

(8)
C. D. (19) 734. Gilmore Ada Wells, music teacher, 179 Princeton, E. B. h. do.
D. D. 50*. Gilmore Ada Wells, music teacher, 179 Princeton, E. B. res. do.

(9)
C. D. (19) 734. Gilmore Annie Mrs. grocer, 465 E. Eighth, S. B. h. do.
D. D. 50*. Gilmore Annie Mrs. grocer, 465 E. Eighth, S. B. res. do.

(10)
C. D. (19) 734. Gilmore John, foreman machinist, 100 Condor, E. B. h. 206 Lexington, do.
D. D. 51*. Gilmore John, foreman machinist, 100 Conder, E. B. res. 206 Lexington, do.

(11)
C. D. (19) 734. Gilpatrie Edgar F. dental student, bds. 45 Forest, Rox.
D. D. 51*. Gilpatrie Edgar F. dental student, res. 45 Forest, Rox.

(12)
C. D. (19) 734. Gilpatrick Samuel S. florist, 1421 Tremont, Rox. h. 61 Terrace, do.
D. D. 51*. Gilpatrick Samuel S. florist, 1421 Tremont, Rox. res. 61 Terrace, do.

(13)
C. D. (19) 734. Gilpatrick T. B. Mrs. florist, 1421 Tremont, Rox. h. 61 Terrace, do.
D. D. 51*. Gilpatrick T. B. Mrs. florist, 1421 Tremont, Rox. res. 61 Terrace, do.

T-25 (and I.D.)

MASTER'S SCHEDULE C, FINDING 9.

NAMES NEITHER FRONT-CHECKED NOR BLUE-DOTTED.

Pages 81 and 82.

C. D. (1) 81. Addison William S. clerk, pier 1, foot Sleeper, bds. 24 Symmes, Ros.
D. D. 216. Addison William S. clerk, res. 24 Symmes, Ros.

Pages 181 and 182.

C. D. (3) 181. Berman Charles J. inspector, city yard, E. Eagle, E. B. bds. 170 London, do.
D. D. 301. Berman Charles, inspector, res. 170 London, E. B.

C. D. (3) 182. Bernstein Charles D. clerk, 14 Wash. bds. 30 Lowell
D. D. 301. Bernstein Charles D. res. 30 Lowell

C. D. (3) 182. Bernstein Morris H. teamster, 32 Parmenter, h. 42 Mt. Vernon, Chsn.
D. D. 301. Bernstein Morris H. teamster, res. 42 Mt. Vernon, Chsn.

C. D. (3) 182. Berrigan Edward W. carpenter, 114 Broad, bds. 192 Neponset av. Dor.
D. D. 302. Berrigan Edward W. carpenter, 114 Broad, res. 192 Neponset av. Dor.

C. D. (3) 182. Berrill Henry W. clerk, 101 Milk, rm. 602, bds. 101 Walnut av. Rox.
D. D. 312. Berrill Henry W. clerk, res. 101 Walnut av. Rox.

C. D. (3) 182. Berry Charles H. painter, 25 Gurney, Rox. h. 61 Summit av. Br.
D. D. 302. Berry Charles H. painter, res. 61 Summit av. Br.

Pages 281 and 282.

C. D. (6) 281. Burns Henry J. paper hanger, h. 126 Everett, E. B.
D. D. 384. Burns Henry J. paper hanger, res. 126 Everett, E. B.

C. D. (6) 282. Burns John F. printer, 393 Chelsea, E. B. bds. 374 Bremen, do.
D. D. 384. Burns John F. printer, res. 374 Bremen, E. B.

C. D. (6) 282. Burns John H. coachman, h. 328 Newbury
D. D. 384. Burns John H. coachman, res. 328 Newbury

C. D. (6) 282. Burns Joseph P. clerk, bds. 25 Fulda, Rox.
D. D. 385. Burns Joseph P. clerk, res. 25 Fulda, Rox.

Pages 381 and 382.

C. D. (8) 382. Colbert William J. news agent, 49 Arch, h. 11 Telegraph, S. B.
D. D. 469. Colbert William J. news agent, res. 11 Telegraph, S. B.

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24 ~~26~~ ~~16~~ Transcribe of Record pp 6 and 6

C. D. (8) 382. Colburn Fred R. clerk, 620 Atlantic av. rm. 16, bds. 2160 Centre, W. R.
D. D. 469. Colburn Fred R. clerk, res. 2160 Centre, W. R.

Pages 481 and 482.

C. D. (11) 481. Damm Martin F. musician, h. 29 Sheridan, J. P.
D. D. 553. Damm Martin F. musician, res. 29 Sheridan, J. P.

C. D. (11) 481. Damrell Thomas, carpenter, 1272 Washington, h. 86 Brunswick, Rox.
D. D. 554. Damrell Thomas, carpenter, 1272 Wash. res. 86 Brunswick

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MASTER'S SCHEDULE D, FINDING 10.

REMOVALS BEFORE ATTEMPTED VERIFICATIONS.

(1)

C. D. (1) 76. Abrams Julius, grocer, 326 Blue Hill av. Rox. h. 60 Bartlett, do.
D. D. 212. Abrams Julius, grocer, 326 Blue Hill av. Rox. res. 60 Bartlett, do.

(2)

C. D. (1) 81. Adamson Thomas W. grocer, 1825 Dorchester av. Dor. h. do.
D. D. 216. Adamson Thomas W. grocer, 1825 Dorchester av. Dor. res. do.

(3)

C. D. (3) 183. Berry J. Fred (Berry & Ferguson) 141 Milk and 45 Medford, Chsn. h. at Somerville
D. D. 303. Berry J. Fred (Berry & Ferguson) 141 Milk and 45 Medford, Chsn. res. at Som.

(4)

C. D. (6) 281. Burns Harry C. draughtsman, 53 State, rm. 1110, bds. at Brookline
D. D. 384. Burns Harry C. draughtsman, 53 State, rm. 1110, res. at Brookline

(5)

C. D. (6) 294. Cady Francis E. asst. Mass. Inst. Tech. h. at Brookline
D. D. 395. Cady Francis E. asst. Mass. Inst. Tech. res. at Brookline

(6)

C. D. (7) 336. Chadwick John, druggist, rms. 156 Warren av.
D. D. 431. Chadwick John, druggist, res. 156 Warren av.

(7)

C. D. (9) 430. Coulthurst James C. clerk, 683 Atlantic av. rm. 65, bds. at Danvers
D. D. 510. Coulthurst James C. clerk, 683 Atlantic av. rm. 65, res. at Danvers

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(8)

C. D. (11) 492. Davis Morgan T. supt. 114 Dudley, Rox. h. 22 Greenville, do.
D. D. 863. Davis Morgan T. supt. 114 Dudley, Rox. res. 22 Greenville, do.

Thirty-eight (38) other instances of removals before attempted verifications are omitted in printing this schedule; subsequently, provided commencing with page to be inserted in proof

MASTER'S SCHEDULE E, FINDING 11.

ERRORS COPIED FROM COMPLAINANT'S COPYRIGHTED DIRECTORY INTO DEFENDANT'S DIRECTORY.

(1)

C. D. (1) 98. Ames Herbert F. salesman, 39 India, h. at Everett
D. D. 231. Ames Herbert F salesman, 39 India, res. at Everett
" " Ames Bertrand F. salesman, 39 India, res. at Everett

(2)

C. D. (3) 168. Beckwith Leslie A. clerk, 168 Devonshire, rms. 7 Follen
D. D. 290. Beckwith Leslie A. clerk, 168 Devonshire, res. 7 Follen
" " Beckwith L. W. clerk, 168 Devonshire, res. 7 Follen

(3)

C. D. (6) 303. Campbell Charles C. printer, 324 Wash. h. at Somerville
D. D. 403. Campbell Charles C. printer, 324 Wash. res. at Som.
" 404. Campbell George C. printer, 324 Wash. res. at Som.

(4)

C. D. (7) 326. Carver George A. salesman, 30 Winter, h. 501 Shawmut av.
D. D. 122. Carver George A. salesman, 30 Winter, res. 501 Shawmut av.
" " Carver George H. clerk, res. 501 Shawmut av.

(5)

C. D. (12) 508. Dennett Jarvis, floorwalker, 5 Winter, h. 215 Heath, Rox.
D. D. 576. Dennett Jarvis, floorwalker, 5 Winter, res. 215 Heath. Rox.
" 636. Dennett James, buyer, 5 Winter, res. 215 Heath

(6)

C. D. (17) 676. Forte Frank, hairdresser, 378 Atlantic av. h. 152 Albany
D. D. 1*. Forte Frank, hairdresser, 378 Atlantic av. res. 152 Albany
" " Forti Frank, hairdresser, 378 Atlantic av. res. 153 Auburn

(7)

C. D. (18) 707. Gallivan Timothy R. clerk, 77 Bedford, bds. at Braintree

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26 ~~28~~ Transcript of Record (Cont'd)

D. D.	27*.	Gallivan Timothy, R. clerk, 77 Bedford, res. at Braintree
"	28.	Galvin Timothy R. salesman, 77 Bedford, res. at Braintree
		(8)
C. D. (19)	717.	Gavaghan Michael J. jr. boilermaker, h. 331 Paris, E. B.
D. D.	36*.	Gavaghan Michael J. jr. boilermaker, res. 331 Paris, E.B.
"	"	Gavaghan Thomas F. machinist, res. 331 Paris, E. B

Twenty-eight (28) other instances of errors copied from complainant's copyrighted directory into defendant's directory are omitted in printing this schedule; subsequently made commencing with page 1

August 26, 1904. The foregoing, except as corrected in accordance with Master's Notes 35, 38, 41 and 44, was submitted to counsel for both parties, Mr. Browne and Mr. Hunt, as a first draft report to be retained in the master's office till Thursday, September 15, 1904.

Counsel for both parties filed objections to said first draft report, entitled as follows: "Respondent's Objections to Master's Report", filed August 30, 1904, "Respondent's further Objections to Master's Report," filed September 2, 1904, and "Complainant's Action on Master's Draft Report," filed September 15, 1904. I have inserted in these papers Master's Notes 1 to 48, inclusive, showing my action thereon, and explaining such action in some particulars. Except so far as these notes modify my report, I overrule the objections of both parties. These objections with Master's notes inserted are as follows: —

(Not marked in proof)

RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.

[Filed with the Master August 30, 1904.]

(1) The respondent objects to so much of Master's Finding 6 as finds that agents and employés of respondent failed to make the verification therein referred to.

(2) The respondent objects to Master's Finding 7 in so far as it finds that an actual verification from original sources of information was impossible or was not made.

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(qui T-13)

(3) The respondent objects to so much of Master's Finding 8 as finds that seven (7) of the persons therein mentioned had moved before the respondent commenced its canvass.

(4) The respondent objects to Master's Finding 9.

(5) The respondent objects to Master's Finding 10, and particularly to the part thereof which finds that an actual verification was impossible, and to that part which finds that the persons whose names are therein mentioned had moved prior to July 12, 1903, or July 1, 1903, or the time when attempted verifications were made.

(6) The respondent objects to Master's Finding 11 that the names of persons and information connected therewith are inserted in two forms.

(7) The respondent objects to so much of Master's Finding 14 as finds that the correct residence of the person there mentioned is 31 Sumner Street. Dorchester.

(8) The respondent objects to so much of Master's Finding 15 (1) as finds that the two names there mentioned are intended for the same person.

(9) The respondent objects to so much of Master's Finding 15 (2) as finds that the two names therein mentioned are intended to refer to the same person.

(10) The respondent objects to so much of the Master's Finding 15 (4) as finds the time of removal.

(11) The respondent objects to so much of Master's Finding 15 (5) as finds that the three entries there quoted are intended to refer to the same person.

(12) The respondent objects to so much of Master's Finding 15 (7) as finds that the person therein mentioned had moved before the respondent's canvass.

(13) The respondent objects to so much of Master's Finding 15 (8) as finds that the two names there mentioned intended to refer to the same person.

(14) The respondent objects to Master's Finding 16.

(15) The respondent objects to the Master's first conclusion of law.

(16) The respondent objects to the Master's second conclusion of law.

(17) The respondent objects to the ruling of the Master admitting in evidence hearsay statements as to what was or was not correct information.

(18) The respondent objects to the rulings of the Master admitting in evidence hearsay statements as to dates of removal.

(19) The respondent objects to the rulings of the Master admitting in evidence hearsay statements as to the fact of removal.

(20) The respondent objects to the rulings of the Master declining to strike out hearsay statements as to what was or was not correct information, as to the date of removal, and as to the fact of removal after they had been admitted.

(21) The respondent objects to the refusal of the Master to make the findings requested by it hereto attached.

(22) The respondent objects to the failure of the Master to make the rulings of law requested by it and hereto attached.

(23) The respondent makes again and insists upon the objections taken by him in the course of the trial as shown by the record.

[MASTER'S NOTE 1. Upon consideration of the above twenty-three (23) objections, I make no changes in my draft report; but I consider the findings requested in paragraph 22 and the rulings of law requested in paragraph 23, and make notes therein showing, and to some extent explaining, my action thereon.]

By its Solicitors,

GASTON, SNOW & SALTONSTALL.

RESPONDENT'S REQUEST FOR FINDINGS.

[ATTACHED TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.]

The respondent requests the following findings of facts:

* * * * * * * * * *

FOURTH: There has been no copying of the complainant's book by the respondent except in so far as the method of draw-

ing questions from the complainant's book adopted by the respondent may amount as a matter of law to copying.

[MASTER'S NOTE 2. I am unable to make this finding in view of the facts shown in Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15, 15A and 16.]

FIFTH: The respondent believed in good faith that it had the right to make such use of the complainant's book as it has made, and had been so advised by counsel.

[MASTER'S NOTE 3. The defendant is a corporation and as such could act only through its officers, agents and employés and could have no belief. It must be judged by the acts of its officers, agents and employés in its behalf. Some of its agents believed that it could lawfully use complainant's copyrighted directory to front-check such names as it had obtained information upon by its original canvass, to blue-dot such names, not front-checked, as it desired information upon, to draw questions on such names, which consisted in copying such names, and the information connected therewith, from complainant's copyrighted book on question slips, to ascertain from complainant's copyrighted book original sources of information, and to go to such original sources of information and verify, or correct if incorrect, the information contained on the question slips, and that it could lawfully incorporate in its directory the information so verified or corrected. If the defendant had made such use only of complainant's copyrighted directory, and had incorporated in its directory only such information as it so verified or corrected, I could not have made Master's Findings 7 to 16 inclusive, and 15A. In some way, however, and it is not important to determine in what way, the defendant did the copying set forth in those findings.]

SIXTH: The respondent has actually expended in compiling, printing and binding its directory about forty thousand (40,000) dollars.

[MASTER'S NOTE 4. I find as above requested.]

SEVENTH: The issue of an injunction such as is asked for would mean the total destruction of the respondent's investment in its directory.

[MASTER'S NOTE 5. I cannot say as to this; such an injunction as I find the complainant is entitled to by my first conclusion of law on page 12, would prevent the further use or sale of defendant's 1904 City Directory of Boston, so long as it contained the matters specified in said first conclusion of law.]

EIGHTH: There were at the time of the publication of the respondent's book, and are now, only 180 copies of the complainant's copyrighted book remaining for sale, and there is no sale for these. (Mr. Murdock's evidence, pages 398, 399.)

[MASTER'S NOTE 6. I find as requested.]

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NINTH: The respondent made a *bona fide* canvass of the City of Boston in the course of compiling its book, employing for that purpose large numbers of men, and this canvass extended over a period of between four and six months.

[MASTER'S NOTE 7. I find as requested. See Master's Finding 5, page 4.]

TENTH: The general directory of the respondent's book contains some 50,000 more names than the general directory of the complainant's book.

[MASTER'S NOTE 8. Roughly speaking, yes.]

ELEVENTH: The street directory of the respondent's book contains several hundred more names than the street directory of the complainant's book, and also much additional information with reference to the streets. The complainant makes no claim of infringement in the street directory.

[MASTER'S NOTE 9. Roughly speaking, yes.]

TWELFTH: The respondent's general directory states whenever a person mentioned in it has a telephone, which is information not given by the complainant's directory.

[MASTER'S NOTE 10. Roughly speaking, yes.]

THIRTEENTH: The business directory of the respondent's book is, to a large extent, arranged under different headings from that of the complainant's book.

[MASTER'S NOTE 11. Roughly speaking, yes.]

FOURTEENTH: The number of names in the complainant's book, from which questions were drawn by the respondent, is about twelve per cent of the entire number of names therein contained (Mr. Hyde's evidence, page 350 — questions drawn on seventy-five per cent of the blue-dotted names).

[MASTER'S NOTE 12. Perhaps so. I have not made a close estimate of the percentage, and it is not material that I should do so.]

FIFTEENTH: Ninety per cent of the errors contained in the complainant's book in connection with names from which questions were drawn, have been corrected by the respondent.

[MASTER'S NOTE 13. I cannot say as to this.]

SIXTEENTH: I find that in those cases in which the respondent went to the complainant's book for information to direct it

to original sources of information, it actually made an independent investigation of the original sources of information in substantially all cases [MASTER'S NOTE 14. I cannot find this, considering the whole evidence before me. See Master's Findings 7, 10 and 14], and that in the remaining cases, if any, where no such investigation was made, this occurred by reason of the carlessness or fault of the individual canvassers [MASTER'S NOTE 15. The individual canvassers were the employés of the defendant and if through their carelessness or fault it transpired that the defendant inserted in its directory names and information copied from complainant's copyrighted directory, the defendant is responsible for such copying], and in disobedience to the instructions given by the respondent to its canvassers [MASTER'S NOTE 16. Some of the defendant's agents and employés gave instructions to defendant's canvassers and if from disobedience of the instructions so given it transpired that the defendant inserted in its directory names and information copied from complainant's copyrighted directory, the defendant is responsible for such copying].

SEVENTEENTH: I find that the respondent constantly and emphatically prohibited all of its employés from making any use of the complainant's book except for the purpose of drawing questions from it.

[MASTER'S NOTE 17. Some of the defendant's agents frequently and emphatically prohibited others of defendant's employés from making any use of complainant's copyrighted directory except for the purpose of drawing questions from it.]

EIGHTEENTH: The respondent has produced at the hearing the copy of the complainant's directory, which indicates the exact number of names checked and blue-dotted. It has produced large quantities of the original copy of its own book, and offered to produce the whole of such copy, which was not actually produced only because of its great bulk. It has also produced the original circulars, and some of the original schedules used by it in obtaining original information.

[MASTER'S NOTE 18. I find as above requested.]

NINETEENTH: The respondent put upon the stand as wit-

nesses eight or nine of the men employed by it as canvassers, and six of the women employed by it in office work, two of whom had acted as superintendents. It offered to produce any other canvassers and any other women employed by it whom counsel for the complainant might call for, and a stipulation signed by both counsel has been filed that the number of canvassers and that the number of women employed is so great as to make it impracticable and inconvenient to call them all as witnesses, and that no inference should be drawn against the respondent by reason of its failure to call as witnesses any others.

[MASTER'S NOTE 19. I find as above requested.]

TWENTIETH: The complainant's copyrighted book contains ten fictitious names, of which four are in the general directory. (Mr. Murdock, page 49.) There is no evidence that seven of these ten appear in the respondent's book at all.

[MASTER'S NOTE 20. I find as requested.]

TWENTY-FIRST: There is no evidence that any fictitious name appears in the respondent's general directory or in its street directory.

[MASTER'S NOTE 21. I find as requested.]

TWENTY-SECOND: The three alleged fictitious names which appear in the respondent's business directory and list of halls appear there, because questions were drawn on them from the complainant's book which were not correctly investigated.

[MASTER'S NOTE 22. Three alleged fictitious names appear in respondent's business directory and list of halls, and these names and information connected therewith were not and could not be verified. See Master's Findings 12 and 13.]

TWENTY-THIRD: I find that the complainant can suffer no legal damage hereafter from the further sale of the respondent's book.

[MASTER'S NOTE 23. I cannot find as above requested; it is my opinion that the fact is otherwise. Such damages, however, if any, may be recovered in a civil action brought under Rev. Stat., Sect. 4964, as amended March 3, 1891, 26 Stat. 1109; they cannot be recovered in the present case by bill in equity for an injunction under which profits accruing to the infringer may be recovered, but not damages in addition thereto, as upon a bill in equity for an injunction for infringement of Letters Patent.]

TWENTY-FOURTH: The new directory of the complainant's for the year 1904 was published by them early in the month of July, 1904, prior to the conclusion of the hearings before me in this case.

[MASTER'S NOTE 24. I find as requested.]

RESPONDENT'S REQUESTS FOR RULINGS.

[ATTACHED TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.]

In the above-entitled cause the respondent requests the master to rule as follows:

(1) A compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call. *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 129 Fed. Rep. 761; *Dun* v. *International Mercantile Agency*, 127 Fed. Rep., page 172; *Colliery Engineering Co.* v. *Ewald*, 126 Fed. Rep. 922; *Edw. Thompson Co.* v. *American Law Book Co.* 122 Fed. Rep. 922; *Moffatt* v. *Gill*, 86 Law Times Rep. 405.

[MASTER'S NOTE 25. I rule as above requested.]

(2) One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct. *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 129 Fed. Rep. 761; *Dun International Mercantile Agency*, 127 Fed. Rep 172; *Colliery Engineering Co.* v. *Ewald*, 126 Fed. Rep. 922; *Edw. Thompson Co.* v. *American Law Book Co.*, 122 Fed. Rep. 922; *Moffatt* v. *Gill*, 86 Law Times Rep. 404.

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[MASTER'S NOTE 26. I rule as requested; but the compiler must go to the original sources of information, must ascertain how far the existing facts concur with the statements of the first directory and must print only what by means of his own investigation he has found to be correct.]

(3) The right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows they should be changed to correspond with the facts, and checking them as correct when they prove to be correct.

[MASTER'S NOTE 27. I rule as above requested.]

(4) The utmost legal damage which the plaintiff in this case can sustain by reason of the publication of an infringing book cannot (in view of the fact that there can be no further edition of its copyrighted book) exceed the entire value of all copies remaining in its hands for sale.

[MASTER'S NOTE 28. No damages can be recovered in this case which is upon a bill in equity for an injunction for an infringement of a copyright under which profits accruing to the infringer may be recovered, but not damages in addition thereto, as upon a bill in equity for an infringement of Letters Patent. See Master's Note 23.]

(5) There is no evidence to warrant a finding of error or of the date of removal in any case where the only evidence comes from witnesses who admit that they have no knowledge upon the subject except such as is derived from hearsay.

[MASTER'S NOTE 29. I rule as above requested.]

RESPONDENT'S FURTHER OBJECTIONS TO MASTER'S REPORT.

[FILED WITH THE MASTER SEPTEMBER 2, 1904.]

And now comes the respondent in the above-entitled cause, and prior to September 15, the date set by the Master, files with the Master the following further objections to his report:

FIRST: That the Master has failed to make any finding as to the amount of damage suffered by the complainant through the alleged infringement.

[MASTER'S NOTE 30. No question of damages is involved in the present reference. This is a reference preliminary to an interlocutory

decree which will be final so far as it concerns an injunction; an order for an accounting for profits is usually incorporated in such a decree. If the defendant has infringed, as found by me in Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15 and 15A, in which are specified 159 cases of copying by the defendant from complainant's copyrighted directory, namely:

In Finding	7,	Schedule A,	29 cases,	
" "	8,	" B,	13 "	
" "	9,	" C,	15 "	
" "	10,	" D,	46 "	
" "	11,	" E,	36 "	
" "	12,		1 case,	
" "	13,		2 cases,	
" "	14,		1 case,	
" "	15,		8 cases,	
" "	15A,		8 "	

and has also infringed by copying, as found by me in Master's Finding 9, in a large number of cases not specifically specified, it logically follows that the defendant should be enjoined as stated by me in my first conclusion of law, on page 12 of this report. The profits to be recovered may be determined on a reference to be made a part of or to follow the decree for injunction. It is not my duty to determine these profits on this reference. The damages, if any, resulting from the infringement, may be determined in a civil action under Rev. Stat. 4964, as amended March 3, 1891. See Master's Notes 23 and 28.]

SECOND: That the Master has failed to make any finding as to whether any damage alleged to be suffered by the complainant is either serious or irreparable.

[MASTER'S NOTE 31. See Master's Note 30.]

THIRD: That the Master has failed to make any finding as to whether the injury done to the respondent by an injunction would be disproportionate to the benefit derived by the complainant.

[MASTER'S NOTE 32. See Master's Note 30.]

FOURTH: That the Master has failed to make any finding as to the number of copies of the complainant's copyrighted book which remained in existence, or could be sold at the time of the alleged infringement, or at the time of the hearing.

[MASTER'S NOTE 33. Such finding would not be pertinent to any question involved in this reference. See Master's Notes 23, 28 and 30.]

FIFTH: That the Master has failed to make any finding as to the good faith of the respondent corporation or its officers.

[MASTER'S NOTE 34. The defendant corporation must be judged by what it has done through its officers, agents and employés, which, so far

as the alleged infringement is concerned, is shown by Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15 and 15A. I have not intended, and do not now intend, in this report, to pass upon the good faith of any one. It is not necessary to do so upon this reference.]

By its Solicitors,

GASTON, SNOW & SALTONSTALL.

COMPLAINANT'S ACTION ON MASTER'S DRAFT REPORT.

[FILED WITH THE MASTER SEPTEMBER 15, 1904.]

[9] 1. It is submitted that on page 1, in third line of the paragraph beginning "Front Checks", the word "their" should be changed to "its".

[MASTER'S NOTE 35. I adopt Mr. Browne's suggestion, and have changed my report accordingly.]

[10] 2. That on page 2, about the middle of the page, the words "mutually agreed upon" should be substituted for the words "furnished by Mr. Browne".

[MASTER'S NOTE 36. The record reads: "It is agreed that the evidence in this case may be taken stenographically." I understood that the stenographers were furnished by Mr. Browne, but as to this I may be in error. There may have been an agreement of which I was not advised.]

[12] 3. It is submitted that on page 4, in the paragraph headed "Master's Finding 7", the words "it is impossible that" should be inserted before the words "an actual verification" in the seventh line of said paragraph, and that the word "made" should be substituted for the word "impossible" in the eighth line thereof.

[MASTER'S NOTE 37. My statement as it stands, means substantially the same as it would if amended as suggested by Mr. Browne.]

[13] On page 5, line 6, the word "eleven" should be substituted for the words "the first seven".

[MASTER'S NOTE 38. On re-examination of my draft report, I discover that seven (*but not the first seven*) of the persons represented by the names on Master's Schedule B, moved from the residences or places of business given in both directories before the defendant commenced its original canvass, namely: (1) Charles B. Gilman, (2) Caribel Gilman, (4) Grace M. Gilman, (8) Ada Wells Gilman, (11) Edgar F. Gilpatric, (12) Samuel S. Gilpatrick and (13) Mrs. T. B. Gilpatrick. I accordingly amend Master's Finding 8, page 5, line 6, by striking out the words "the first", and I confirm said finding as so amended. My error arose from re-arranging the names alphabetically after I had drafted the finding.]

4. At the end of the paragraph headed "Master's Finding 9", the following should be inserted: "In the complainant's General Directory, containing 1725 pages, there would be found 2587 such transfers in all, if the same proportion holds throughout".

[MASTER'S NOTE 39. What Mr. Browne suggests should be inserted at the end of Master's Finding 9 as an obvious inference from the last paragraph of that finding. It is not necessary for me to amend this finding.]

5. In the paragraph beginning "Master's Finding 10", in the seventh line thereof, after "but" insert "it is impossible that". In the eighth line of said paragraph substitute "made" for "impossible".

[MASTER'S NOTE 40. My statement as it stands means substantially the same as it would if amended as suggested by Mr. Browne.]

6. It is submitted that in "Master's Finding 11" there should be added to the thirty-five instances of double insertion contained in "Schedule E", the following instances, and that the other findings under this head should be corrected numerically accordingly:

(1) Allen, Robert C., should be Allan, page 18.

(2) Anderson, Charles A., should be William C., page 59.

(3) Benthall, Fred J., should be Bentholl, page 23.

(4) Coburn, William M., 133 Harvard av., should be William B., 13 Harvard av., page 43.

(5) Demers, Joseph, should be James, page 43.

(6) Eastman, Charles, should be Charles E., page 19.

(7) Hale, George A., should be George E., page 19.

(8) Hirschman, Harry, should be Hirshman, page 20.

(9) Lightford, Harry L., should be Lightfoot, Harry W., page 20.

(10) McGibbon, John J., should be John D., page 64.

(11) Rigby, James J., 54 Dorchester, should be 54 Newport, page 45.

(12) Ross, William R., should be Jordan, William Roscoe, page 21.

(13) Saunders, Edward L., 8 Joy, should be Edmund S., 10 Joy, page 21.

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(14) Sheerin, Thomas, Rev., should be John, Rev., page 45.

(15) Stevenson, Francis, 564 Washington, should be Frederick, page 45.

[MASTER'S NOTE 41. In making Master's Schedule E, I examined each of the instances specified by Mr. Browne, except No. 8, and decided not to include them in that schedule I have re-examined these instances and am satisfied that my decision was correct.

No. 8 might have been included in Master's Schedule E, as follows:

(36)

C. D. (23) 883. Hirschman Harry, trimmer, 18 Summer, bds. 124 Union park

D. D. 800. Hirschman Harry, trimmer, 18 Summer, res. 124 Union pk.

" 800. Hirshman Harry, clothing trimmer, 18 Summer, res. 124 Union pk. st.

I now add this instance to Master's Schedule E, and amend Master's Finding 11 by substituting "thirty-six (36)" for "thirty-five (35)" in two places on page 6.]

7. In the paragraph headed "Master's Finding 13", in the seventh line thereof, after the word "av." insert the following sentence: "These were also traps intentionally set, and the defendant fell into them also."

[MASTER'S NOTE 42. This sentence is easily read into Master's Finding 13 as it stands. It is not necessary to amend the finding.]

[16]

8. On page 8, before "Master's Finding 15", insert a new paragraph as follows:

"Master's Finding 14A. The defendant transferred to all parts of its Business Directory from the complainant's copyrighted directory many names and information connected therewith, which it did not obtain by its original canvass. As it is admitted, 'the defendant's Business Directory was checked up from original information in the same way as the General' (Hyde, page 265), but there was no blue-dotting. It has appeared that the number of names so transferred in check books 2 and 3, taken as samples of the whole, was about forty per cent of all the names appearing in the defendant's Business Directory."

[MASTER'S NOTE 43. I decline to incorporate the above into my report as Master's Finding 14A. The defendant introduced evidence tending to prove that it made a use of complainant's business directory similar to that which it claimed to have made of complainant's general directory, that is

to say, that it front-checked the names as to which it obtained information by its original canvass, and drew questions upon slips of paper on such names in small type as it did not front-check, and using these question slips went to original sources of information, verified the information contained on the question slips or corrected it where it should be corrected, and transferred to its directory the information so verified or corrected. This evidence is uncontradicted except as to two (2) specific instances, specified in Master's Finding 13, eight (8) specific instances specified in Master's Finding 15, and eight (8) specific instances specified in Master's Finding 15A, made upon consideration of Mr. Browne's suggestion which immediately follows this note.]

9. On page 10, before the paragraph beginning "Master's Finding 16", insert "Other cases of errors copied in the Business Directory are as follows: [18]

(1) D. D., page 1612, Barbers, Alario, Joseph, testimony, page 75.

(2) D. D., page 1760, Real Estate, Beals & Newhall, testimony page 75.

(3) D. D., page 1649, Dress-makers, Burham, S. E., testimony page 75.

(4) D. D., 1776, Shoe-makers, Dugas, John, page 74.

(5) D. D., page 1778, Shoe Manufacturers, Farrior, Brown Shoe Company, page 76.

(6) D. D., page 1610, Bakers, Langerfeld, John P., page 78.

(7) D. D., page 1799, Teachers of Music, Moore, Grace T., page 78.

(8) D. D., page, 1623, Butter and Cheese, Mugford, B. E., page 74.

(9) D. D., page 1777, Shoe-makers, Petro, Frederick, page 74.

(10) D. D., page 1777, Shoe-makers, Riley, Patrick J., page 74.

(11) D. D., page 1760, Real Estate Brokers, Adams Real Estate Trust Company, page 18.

(12) D. D., page 1700, Lawyers, Chisholm, George C., page 19.

(13) D. D., page 1649, Dress-makers, Churchill, Mrs. M. H., page 19.

(14) D. D., page 1606, Artists, Enneking, John J., page 19.

(15) D. D., page 1721, Milliners, Gibbs, Carrie E., page 19.

(16) D. D., page 1787, Stock Brokers, Gile, Daniel D., page 43.

(17) D. D., page 1702, Lawyers, Hay, Robert T., page 19.

(18) D. D., page 1625, Carpenters, Henderson, W. T., page 43.

(19) D. D., page 1671, Grocers, Johnson, Adolph O., page 47.

(20) D. D., page 1672, Grocers, Laro V., page 20.

(21) D. D., page 1650, Dress-makers, Leach, Lile, page 44.

(22) D. D., page 1704, Lawyers, Morrell, George C., page 44.

(23) D. D., page 1797, Teachers of Music, Shedd, Heman, page 45.

(24) D. D., page 1601, Accountants, Watson, George, page 21.

(25) D. D., page 1610, Bakers, Westcott, Jennie, page 68.

In all the instances last above mentioned, the defendant's General Directory either fails to show the name at all, or shows it with different information. In every case the information furnished in the defendant's Business Directory is an error copied from the complainant's Business.

[MASTER'S NOTE 44. I have now examined the above instances which were not called to my attention specifically in complainant's brief nor at the argument before me, and in view thereof make the following finding:

MASTER'S FINDING 15A. Other cases of errors copied into the defendant's Business Directory, making a part of its 1904 City Directory of Boston, from complainant's copyrighted directory are as follows:

(9) Mr. BROWNE'S (10)

Business heading, BOOT AND SHOE MAKERS in complainant's and SHOEMAKERS in defendant's directory.

C. D.	(2)	1967.	Riley Patrick J. 145 Albany
D. D.		1777.	Riley Patrick J. 145 Albany
"		1386.	Riley Patrick J. Boots and shoes, 7 Oak, res 93 do.

(10) Mr. BROWNE'S (12)

Business heading in both directories, LAWYERS.

C. D.	(8)	2078.	Chisholm George C. 15 Court sq. rm. 2
D. D.		1700.	Chisholm George C. 15 Court sq. r. 2
"		443.	Chisholm George C. real estate, 15 Court Sq. rm. 2 res. at Sharon.

(11) Mr. BROWNE'S (15)

Business heading in both directories, MILLINERS.

C. D.	(9)	2103.	Gibbs Carrie E. 110 Hotel Pelham
D. D.		1721.	Gibbs Carrie E. 110 Hotel Pelham
"		43*.	Gibbs Carrie A. Mrs. millinery, 110 Hotel Pelham, res. do.

(12) Mr. Browne's (17)
Business heading in both directories, Lawyers.

C. D. (8) 2080. Hay Robert T. 53 State, rm. 712
D. D. 1702. Hay Robert T. 53 State, rm. 712
" 766. Hay Robert T. (Carret, Chase & Hay) lawyer, 53 State, rm. 713, res. 2 Quincy pl. Rox.

(13) Mr. Browne's (18)
Business heading in both directories, Carpenters and Builders.

C. D. (3) 1983. Henderson W. T. 35 Crescent ave. Dor.
D. D. 1625. Henderson W. T. 35 Crescent ave. Dor.
" 780. Henderson William T. carpenter, res. 53 Crescent ave. Dor.

(14) Mr. Browne's (19)
Business heading in both directories, Grocers.

C. D. (6) 2046. Johnson Adolph O. 498 Sumner E. B.
D. D. 1671. Johnson Adolph O. 498 Sumner E. B.
" 862. Johnson Adolph O. dry goods 322 Sumner, E. B. and grocer, 487 do. res. 498 do.

(15) Mr. Browne's (20)
Business heading in both directories, Grocers.

C. D. (6) 2046. Laro V. 469 Hanover
D. D. 1672. Laro V. 469 Hanover
" 928. Lauro Vincenzo, grocer, 469 Hanover, res. do.

(16) Mr. Browne's (25)
Business heading in both directories, Bakers.

C. D. (1) 1956. Westcott Jennie 85 Orleans
D. D. 1610. Westcott Jennie 85 Orleans
C. D. 1870. Westcott Jennie, baker, 95 Orleans, E. B. h. 222 Everett, do.

I decline to make a similar finding as to Mr. Brown's instances 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 16, 21, 22, 23, and 24, preferring not to find copying where there is not corroborative proof thereof from an inspection of defendant's directory except in the single instance of Westcott Jennie as to which the evidence of complainant's witness, Alexander Hutchins, (typewritten page 68) is plenary.

COMPLAINANT'S REQUESTS FOR RULINGS.

Upon the findings of fact made by the Master, it is requested that he should find as conclusions of law instead of the findings made by him, as follows:

First. From the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied nu-

merous names of persons occurring in the complainant's directory, but deceased or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant, from using, selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

NOTE. This conclusion is based upon the assumption that whereas the defendant's witnesses have testified that in every case where information was not obtained by original canvass, it was obtained by verification of matter copied from complainant's book, yet it appearing that in these isolated and widely separated instances such was not the fact, there is ground for finding that in no case was the matter copied from complainant's book verified, but that all matter so copied was printed as copied, without verification. If this be found, the matter so printed forming a large portion of the defendant's entire book, and not being readily distinguishable from the rest, the defendant having wrongfully mixed the matter of another with his own, must suffer the consequences.

[MASTER'S NOTE 45. I decline to report a conclusion of law in the form above suggested by Mr. Browne. I have found as facts substantially that the defendant copied into its directory from complainant's copyrighted directory the three trap names mentioned in Master's Findings 12 and 13, and has so copied the errors specified in Master's Findings 7, 8, 10, 11, 14, 15, and 15A, and the errors referred to in Master's Finding 9. I amend my first conclusion of law on page 12 by substituting for the words, "Master's Finding 15", at the end of paragraph (4), the words, "Master's Findings 15 and 15A", and, as thus amended, I confirm my said first conclusion of law.] [20]

SECOND. If the complainant is not entitled to an injunction as aforesaid, then that it is entitled to an injunction against the defendant from using or selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of its 1904 City Directory of Boston so long as it contains the matter set forth in paragraphs 1, 2, 3 and 4, on page 12 of the Master's Report. [20]

[20] [MASTER'S NOTE 46. Yes; that was the intent of my first conclusion of law on page 12, and I assent that the words, "or otherwise disposing of, or offering to dispose of", may be inserted in the second line of my said first conclusion of law, after the words, "or offering for sale".]

THIRD. If the first conclusion of law above set forth is correct, the complainant is entitled to a decree for an accounting of profits derived by defendant from and by reason of its manufacture, use, sale, or delivery of its 1904 City Directory of Boston.

[MASTER'S NOTE 47. Yes; but in Master's Note 45 I have declined to report a conclusion of law in the form set out in Mr. Browne's above paragraph FIRST.]

FOURTH. If the second conclusion of law above set forth is sustained, the complainant is entitled to a decree as set forth in the clause marked "SECOND" at the end of the Master's present findings.

[MASTER'S NOTE 48. Yes; the complainant is entitled to such a decree.]

Respectfully submitted,

ALEX. P. BROWNE,

Solicitor and of Counsel for Complainant.

Respectfully submitted,

JOHN G. STETSON, *Master.*

SEPTEMBER 30, 1904. The foregoing was submitted to counsel for both parties, Mr. Browne and Mr. Hunt, as a second draft report to be retained in the master's office till Wednesday, October 5, 1904.

OCTOBER 3, 1904. Mr. Hunt sent to me a letter from which I quote the following:

I think that, to protect fully the rights of my clients, I must ask you to report all the evidence in Sampson & Murdock Co. *v.* Seaver-Radford Co.

Upon this request by Mr. Hunt in behalf of the defendant I report all the evidence before me as required by the order of reference of May 17, 1904, and I annex a schedule of this evidence to this report.

OCTOBER 15, 1904. No further objections being taken by either party and no further requests being made by either party, I make this my final report.

Respectfully submitted,

JOHN G. STETSON, *Master.*

44 #6 Transcript of Record of Circuit Court

Copy commencing with
page 47 comes here

Left title on
arm and on left
title Masters Reports, - Schedule A.
or whatever schedule it may be

T-46

(Cont.)

This copy will come at top of page 44

MASTER'S SCHEDULE A, FINDING 7.

DEATHS BEFORE ATTEMPTED VERIFICATIONS.

[Memorandum. ~~The first~~ Instances of deaths upon alleged verifications (1) to (8), inclusive, ~~of this schedule~~, being marked on page 21, are omitted in numbering this schedule. J. McG. Stidston, clerk.]

Follow with page 48 of copy, filling up name style as on page 21 from (9) to

Indexer

T-47 (Gal T.22)

(9)

C.D. (21) 835. Harvey William F. 104 Kingston, b.92 Wenham, J.P.

D.D. 759. Harvey William F. 104 Kingston, res. 92 Wenham, J.P.

(10)

C.D. (22) 847. Hayes John B. trunk maker, 628 Wash. h.at Camb.

D.D. 768. Hayes John B. trunk maker, 628 Wash.res.at Camb.

(11)

C.D. (23) 883. Hitchcock A.Lawrence, 101 Tremont, rm.711, h. at Newton

D.D. 800. Hitchcock A.Lawrence, 101 Tremont, rm.711, res.at Newton

(12)

C.D. (30) 1060. Lawrence Francis W. pres. Globe Gas Light Co. 77 Union, h.at Longwood

D.D. 931. Lawrence Francis W. pres. Globe Gas Light Co. 77 Union, res.at Longwood

(13)

C.D. (34) 1167. Marston N.Dearborn, salesman, 177 High, house at Everett

D.D. 1032. Marston N.Dearborn, salesman, 174 High, res.at Everett

(14)

C.D. (35) 1189. McCarthy Daniel J. cloth sponger, 12 Columbia, h.at Cambridge

D.D. 1055. McCarthy Daniel J.cloth sponger, 12 Columbia, res.at E.Camb.

(15)

C.D. (37) 1255. Mead Charles E.(Mead, Mason & Co.) 520 Tremont Bldg. h.at Everett

D.D. 1119. Mead Charles E.(Mead, Mason & Co.) 520 Tremont Bldg. res.at Everett

T-48

(16)

C.D. (40) 1325. Murphy Daniel J. boxes,h.18 Newport, Dor.

D.D. 1184. Murphy Daniel J. boxes,res.18 Newport,Dor.

(17)

C.D. (42) 1372. Norton John A. Clerk,Battery Wharf, h.at Chelsea

D.D. 1229. Norton John A. clerk,Battery Wharf, res.at Chelsea

(18)

C.D. (44) 1423. Parker Edward J. real estate, h.19 Windsor,Rox.

D.D. 1277. Parker Edward J. real estate, res.19 Windsor,Rox.

(19)

C.D. (46) 1456. Phillips Charles P. real estate,h. 809 Albany,Rox.

D.D. 1308. Phillips Charles P. real estate, 809 Albany,Rox.

(20)

C.D. (48) 1514. Reardon William A. rulemaker,190 Congress,bds.21 Oak

D.D. 1361. Reardon William A. rulemaker,190 Congress,res.21 Oak

(21)

C.D. (50) 1559. Rogers George W. sailmaker,95 Commercial,h.at Chelsea

D.D. 1403. Rogers George W. sailmaker,95 Commercial,res.at Chelsea

(22)

C.D. (51) 1567. Rosenthal Joseph, clothing 50 Salem, h.31 do.

D.D. 1411. Rosenthal Joseph, clothing 50 Salem, res.31 do.

T-49

(23)

C.D. (53) 1640. Shepley George F.(Shepley,Rutan & Coolidge) 122 Ames Bldg. h.at Brookline

D.D. 1478. Shepley George F.(Shepley,Rutan & Coolidge) 122 Ames Bldg. res.at Brookline

(24)

C.D. (56) 1713. Stewart James D. clerk,96 Green,Chsn. bds.at Chelsea

D.D. 1547. Stewart James D. clerk,96 Green,Chsn. res.at Chelsea

(25)

C.D. (62) 1889. Whitney Harley A. salesman,55 Blackstone,House at Somerville

D.D. 107.** Whitney Harley A. salesman,55 Blackstone,res.at Somerville

(26)

C.D. (3) 170. Belknap George E. chairman Nautical Training School Commission,110 State House,h.at Brookline

D.D. 292. Belknap George E. chairman Nautical Training School Commission,110 State House,res.at Brookline

(27)

C.D. (20) 779. Gregory Franklin E. 162 High, h.at Framingham

D.D. 90.* Gregory Franklin.E. 126 High,res.at Framingham

(28)

C.D. (28) 1021.Kimball Henry W. baker 754 Wash. Dor.h.756 do.

D.D. 9121.Kimball Henry W. baker 754 Wash. Dor.res.756 do.

T-50

(29)

C.D. (56) 1740 Suminsby Rodney F. water inspector,
City Hall, h. 57 Bernard, Dor.

D.D. 1574. Siminsby Rodney F. water inspector,
City Hall, res. 57 Bernard, Dor.

Mle

Close up

MASTER'S SCHEDULE B, FINDING 8.

NAMES NEITHER FRONT-CHECKED NOR BLUE-DOTTED.

Close up

[MEMORANDUM. This Schedule B., Finding 8, is printed in full in Master's Report, pages 13 and 14.] [21]

[22]

Mle

Close up

MASTER'S SCHEDULE C, FINDING 9.

NAMES NEITHER FRONT-CHECKED NOR BLUE-DOTTED.

Close up

[MEMORANDUM. This Schedule C., Finding 9, is printed in full in Master's Report, pages 15 and 16.] [23]

Mle

[12]

T-51

(9 al T-23)

MASTER'S SCHEDULE D, FINDING 10.

REMOVALS BEFORE ATTEMPTED VERIFICATIONS.

[Memorandum. Instances of removals before attempted verifications (1) to (8), inclusive, being printed on pages 24 and 25, are omitted in printing this schedule. John G. Stilson, Clerk.]

Follows with page 53
2 cols 5 lines with blank
style as on page 24 from
(9) to

T-52

(9)

C.D.(11)496. Day Nathan B. lawyer,350 Tremont bldg. h.280 Newbury

D.D. 567. Day Nathan B. lawyer,350 Tremont bldg.res.280 Newbury

(10)

C.D.(12)524. Diserens Ralph F. salesman,156 Oliver,h.105 Glenway,Dor.

D.D. 590. Diserens Ralph F. salesman,156 Oliver,res.105 Glenway,Dor.

(11)

C.D.(18)710. Gardiner Charles A. asst.assessor, bds.56 Burnett,J.P.

D.D. 30.* Gardiner Charles A. asst.assessor, res.56 Burnett,J.P.

(12)

C.D.(18)712. Garfield Frank I. civil engineer, h.159 Bellevue av.Ros.

D.D. 31* Garfield Frank I. civil engineer, res.159 Bellevue av.Ros.

(13)

C.D.(20)765. Graham Peter, physician,9 Malden, rms.do.

D.D. 78.* Graham Peter, physician, 9 Malden, res.do.

(14)

C.D.(20)792. Habelow Louis, real estate, h.22 Willard

D.D. 721. Habelow,Louis, real estate,res.22 Willard

(15)

C.D.(20)792. Habelow Michael, hostler,h.22 Willard

D.D. 721. Habelow Michael, hostler,res.22 Willard

(16)

C.D.(21)797. Hale Joseph, clerk,rms.54 Myrtle

D.D. 725. Hale Joseph, clerk, res.54 Myrtle

T-53

(17)

C.D.(21)817. Harbolow Louis, real estate, h.69 Lowell

D.D. 742. Harbolow Louis, real estate, res. 69 Lowell

(18)

C.D.(21)833. Hartmann Arnold, clerk, 43 South, h.26 Corona,Dor.

D.D. 756. Hartmann,Arnold, clerk, 43 South, res.26 Corona, Dor.

(19)

C.D.(22)855. Hedderwick Maitland, china decorator, 38 Portland,h.88 Myrtle

D.D. 775. Hedderwick Maitland, china decorator, 38 Portland, res.88 Myrtle

(20)

C.D.(24)905. Horstmeier Albert W.A. artist, 711 Boylston,h.do.

D.D. 820. Horstmeier Albert W.A. artist, 711 Boylston,res.do.

(21)

C.D.(24)945. Jacobs, Blanche S. teacher, h.47 Vermont,W.R.

D.D. 853. Jacobs, Blanche S. teacher,res. 47 Vermont,W.R.

(22)

C.D.(26)962. Johnson Nathan H. packer,111 Beach, bds. at Everett

D.D. 867. Johnson Nathan H. packer, 111 Beach, res.at Everett

(23)

C.D.(32)1098. Lloyd Harry K. designer, 144 Essex, h.17 Malvern,Dor.

D.D. 966. Lloyd Harry K. designer, 144 Essex, res.17 Malvern,Dor.

(24)

C.D.(32)1104. Long A.E.& Son(George W.) undertakers, 644 Warren,Rox. h.at Cambridge.
D.D. 971. Long A.E.& Son(George W.) undertaker 644 warren,Rox. res. at Camb.

(25)

C.D.(32)1104. Long George W.(A.E.Long & Son),undertaker,644 Warren,Rox. h. do.
D.D. 971. Long George W.(A.E.Long & Sons),undertaker,644 Warren,Rox. res. do.

(26)

C.D.(34)1168. Martin Albert P. treas.132 Lincoln,h. at Milton
D.D. 1033. Martin Albert P. treas.132 Lincoln,res. at Milton

(27)

C.D.(36)1203. McDaniel Allen B. draughtsman,101 Tremont,rm.913,bds.21 Edson,Dor.
D.D. 1069. McDaniel Allen B. draughtsman,101 Tremont,rm.913,res.21 Edson,Dor.

(28)

C.D.(37)1231. McKenna John, teamster,116 Tremont, h.16 Stone,Chsn.
D.D. 1095. McKenna John, teamster,116 Tremont, res.16 Stone,Chsn.

(29)

C.D.(38)1258. Meehan William, 15 N.Grove, h.130 Leverett
D.D. 1122. Meehan William, 15 N.Grove,res.130 Leverett

(30)

C.D.(40)1335. Murray Aubrey R. clerk,111 Chauncey, bds.3 Stamford pl.
D.D. 1194. Murray Aubrey R. clerk,111 Chauncey, res.3 Stamford pl.

T-55

(31)

C.D.(42)1367. Nolte Julius E. draughtsman,101 Tremont,rm.913,bds.803 Centre,J.P.

D.D. 1225. Nolte Julius E. draughtsman,101 Tremont,rm.913 res.803 Centre,J.P.

(32)

C.D.(44)1413. Owen Thomas C. clerk,111 Causeway, rms.5 Allston

D.D. 1269. Owen Thomas C. clerk,111 Causeway, res. 5 Allston

(33)

C.D.(45)1439. Peckham David R. conductor,N.Y.,N.H. & H.R.R. h.37 Saxton,Dor.

D.D. 1439. Peckham David R. conductor,N.H.& H. R.R. res.37 Saxton,Dor.

(34)

C.D.(46)1460. Pierce Edwin E. clerk,B.& M.R.R. H.T.D.,Water,Chsn.rms.30Winthrop,do.

D.D. 1312. Pierce Edwin E. clerk, B.& M.R.R. H.T.D. Water,Chsn. res.30 Winthrop,Do.

(35)

C.D.(50)1562. Rollins George R. stable,71 Trenton, E.B. h.at Chelsea

D.D. 1406. Rollins George R. stable,71 Trenton, E.B. res. at Chelsea

(36)

C.D.(50)1562. Rollinson Merle L. telegrapher,B.& A. R.R. E.B. bds.at Winthrop

D.D. 1406. Rollinson Merle L. telegrapher,B.& A. R.R. E.B. res.at Winthrop

(37)

C.D.(51)1585. Ryan Thomas J. porter, Adams Express, South sta. h.270 W.Broadway,S.B.

D.D. 1428. Ryan Thomas J. porter, Adams Express, South sta. res.270 W.Broadway,S.B.

(38)

C.D.(54)1668. Smith Frank W. horse shoer,274 Dover, bds.Hotel Clarendon

D.D. 1506. Smith Frank W. horse shoer,274 Dover, res.Hotel Clarendon

(39)

C.D.(55)1676. Smith Roxie A. nurse, bds.29 Boylston av. J.P.

D.D. 1514. Smith Roxie A. nurse, res.29 Boylston av. J.P.

(40)

C.D.(56)1717. Stockwell Howard A. clerk,30 Eustice, Rox. bds. 1 Leslie pk.do.

D.D. 1551. Stockwell Howard A. clerk,30 Eustice, Rox. res. 1 Leslie park,do.

(41)

C.D.(60)1833. Wallberg Anna C. Boston Literary Bureau,8 Dalton,h.do.

D.D. 58.** Wallberg Anna C. Boston Literary Bureau,8 Dalton,res.do.

(42)

C.D.(60)1840. Ward Daniel E. clerk,121 Beach,h.55 Saxton,Dor.

D.D. 65.** Ward Daniel E. clerk,121 Beach,res. 55 Saxton,Dor.

(43)

C.D.(62)1885. White William,electrician,100 High, bds.44 Sterling,Rox.

D.D. 104.** White William, electrician,100 High, res.44 Sterling,Rox.

(44)

C.D.(62)1886. Whitehouse Louis A. draughtsman,221 Columbus av.h.1 Monmouth,E.B.

D.D. 105.** Whitehouse Louis A. draughtsman,res. 1 Monmouth,E.B.

Graham T-57 (yal T-215)

(45)

C.D.(62)1893. Wiggin Henry D.jr. clerk,95 Milk,rm. 26,bds.at Medford

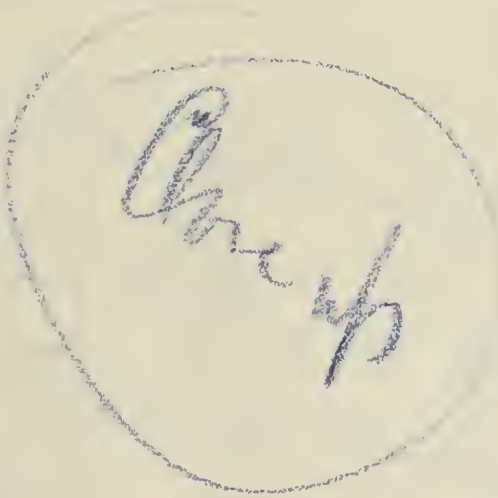
D.D. 111.** Wiggin Henry D.jr. clerk,95 Milk,rm. 26,res.at Medford

(46)

C.D.(63)1917. Wise John H. salesman, 41 Sudbury,h. 577 Tremont

D.D. 132.** Wise John H. salesman,41 Sudbury,res. 577 Tremont

Male



T-58

MASTER'S SCHEDULE E, FINDING 11.

ERRORS COPIED FROM COMPLAINANT'S COPYRIGHTED DIRECTORY INTO DEFENDANT'S DIRECTORY.

Stet

[Memorandum. Instances of errors copied from complainant's directory into defendant's directory (1) to (8), inclusive, being printed on pages 25 and 26, are omitted in printing this schedule. John G. Nelson, Clerk.]

Follows with page 60
& copy setting up same
staple as on page 25—
Orm
(9) ve

(9)

C.D.(20)789. Guild Willard G. clerk,43 Temple pl. h.17 Wait,Rox.

D.D. 98. Guild Willard G. clerk,43 Temple pl. res.17 Wait,Rox.

" " Guild Willis G. apothecary,res.17 Wait,Rox.

(10)

C.D.(21)816. Hansom Alfred, clerk,Fourth National Bank

D.D. 740. Hansom Alfred, clerk,Fourth Nat.Bank

" " Hansen Alfred, messenger Fourth Nat. Bank,Board of Trade bldg.res.162 Pleasant,Dor.

(11)

C.D.(21)821. Harlow George H. clerk,11 N.F.H.mkt.

D.D. 746. Harlow George H. clerk,11 New F.H.mkt.

" " Harlow George W. salesman,11 New F.H. mkt.res.454 Mass.av.

(12)

C.D.(22)852. Healy Canton Express,14 Devonshire

D.D. 773. Healy Canton Express,14 Devonshire

" 772. Healey Canton Exp. 14 Devonshire

(13)

C.D.(23)867. Hesenius Martin, salesman,69 Bedford, h.21 Atherton pl.Rox.

D.D. 786. Hesenius Martin, salesman,69 Bedford, res.21 Atherton pl.Rox.

" 759. Hasenfuss Martin, salesman,69 Bedford res.5 Atherton pl.Rox.

(14)

C.D.(23)868. Hewitt Alfred A. restaurant,135 Dartmouth,h.130 do.

D.D. 787. Hewitt Alfred A. restaurant,135 Dartmouth,res.130 do.

" 186. Hewett Alfred A. restaurant,133 Dartmouth,res.130 do.

(15)

C.D.(23)872. Hiegle Joseph, baker,30 Marshfield, Rox.h.do.

D.D. 790. Hiegle Joseph, baker,30 Marshfield, Rox.res.do.

" 832. Huegel Joseph, bakery,30 Marshfield, Rox.res.do.

(16)

C.D.(24)905. Horrigan David, fireman,53 State,h. at Everett

D.D. 820. Horrigan David, fireman,53 State,res. at Everett

" 823. Hourigan David, day fireman, 53State.

(17)

C.D.(29)1035. Knub Christian, painter,25 Gurney, Rox.h.56 Delle av.do.

D.D. 912r. Knub Christian,painter,25 Gurney, Rox.res.56 Delle av.do.

" 443. Christiensen Knud,painter,25 Gurney, Rox.res.56 Delle av.do.

(18)

C.D.(32)1101. Lockney Thomas H. Supt.450 Wash.bds. 58 Burrell,Rox.

D.D. 968. Lockney Thomas H. supt.450 Wash.res. 58 Burrell,Rox.

" " Lockney Thomas F. supt.450 Wash.res. 58 Burrell,Rox.

(19)

C.D.(33)1132. Macheum James, clerk, 75 Clinton,h. 37 Callender,Dor.

D.D. 998. Macheum James, clerk, 75 Clinton,res. 37 Callendar,Dor.

" " Macheum James, clerk, 75 Clinton,res. 37 Callender,Dor.

(20)

C.D.(37)1251. McPartland George A. clerk,Hotel Cecil, bds.do.

" 1115. McPartland George A. clerk,Hotel Cecil, res.do.

" " McPartlin George A. clerk,Hotel Cecil, res.do.

(21)

C.D.(37)1253. McRae John, engineer,13 Richmond,h. 103 Rosseter,Dor.
D.D. 1117. McRae, John, engineer, 13 Richmond,res. 103 Rosseter, Dor.
" 1002. MacRae John, engineer, 41 Richmond,res. 103 Rosseter, Dor.

(22)

C.D.(42)1377. Nutter Ira W. clerk,B.& M.R.R.,E.B.h. 9 Saratoga,do.
D.D. 1234. Nutter Ira W. clerk,B.& M.R.R.,E.B.res. 9 Saratoga,do.
" " Nutter Harry W.,clerk,B.& M.R.R.,E.B. res. 9 Saratoga,do.

(23)

C.D.(43)1395. Ohrenberger Charles E. clerk,1270 Dorchester av. Dor.bds.609 River,Mat.
D.D. 1252. Ohrenberger Charles E. clerk,1270 Dorchester av.Dor.res.609 River,Mat.
" " Ohrenberger Charles F. mfg.chemist, res.609 River,Mat.

(24)

C.D.(44)1431. Patrio Albert E. cashier,Adams House, h.40 Norway
D.D. 1284. Patrio Albert E. cashier,Adams House, res.40 Norway
" " Patrio Albert E. cashier,res.40 Norway

(25)

C.D.(47)1481. Powers Thomas,clerk,107 Washington, h.21 Harvard pl.Chsn.
D.D. 1330. Powers Thomas,clerk,107 Wash.res. 21 Harvard place,Chsn.
D.D. " Powers Thomas A. clerk,107 Wash.res. 21 Harvard square,Chsn.

(26)

C.D.(49)1533. Richardson Earl B. clerk,First National Bank,h.at Winchester
D.D. 1379. Richardson Earl B. clerk,First National Bank,53 State,res.at Winchester.
" 1380. Richardson H.Earle,bookkeeper,First National Bank,53 State,res.at Winchester

T-62

(27)

C.D.(50)1551. Robinson Burton H. clerk,96 Federal, res.at Newton Centre
D.D. 1396. Robinson Burton H. clerk,96 Federal res.at Newton Centre
" 1394. Robertson Burton H. clerk,96 Federal,res.at Newton Centre

(28)

C.D.(51)1574. Roxbury Edward J. clerk,863 Harrison av. h.175 Northampton
D.D. 1417. Roxbury Edward J. clerk,863 Harrison av. res.175 Northampton
" " Roxbury John E. mgr.863 Harrison av. res.175 Northampton

(29)

C.D.(54)1647. Side Bros.(Harry and Morris),confectionery,16 Cross
D.D. 1485. Side Bros.(Harry and Morris),confectionery,16 Cross
" 1460. Seid Bros.(Morris and Harry),lunch, 16 Cross

(30)

C.D.(54)1647. Side Harry (Side Bros.),16 Cross, h.11 Cotting
D.D. 1485. Side Harry (Side Bros.),16 Cross, res.11 Cotting
" 1460. Seid Harry (Seid Bros.) lunch,16 Cross,res.16 Stillman

(31)

C.D.(54)1647. Side Morris (Side Bros.) 16 Cross, bds.11 Cotting
D.D. 1485. Side Morris(Side Bros.),16 Cross,res. 11 Cotting
" 1460. Seid Morris (Seid Bros.)lunch,16 Cross,res.16 Stillman

T-63

(32)

C.D.(54)1697. Stackpole T.F. salesman,51 Chardon, h.at Somerville

D.D. 1533. Stackpole T.F. salesman,51 Chardon, res.at Som.

" 1533. Stackpole J.Frank, salesman,51 Chardon,res.at W.Som.

(33)

C.D.(56)1710. Stevens Fred, shipper,172 Mass.av. bds.3555 Washington,J.P.

D.D. 1544. Stevens Fred, shipper,172 Mass.av. res.3555 Wash.J.P.

" " Stevens Frederick G. res.3155 Wash. J.P.

(34)

C.D.(58)1764. Terrill Frank X. 61 Kilby,h.at Chelsea

D.D. 1595. Terrill Frank X. 61 Kilby,res.at Chelsea

D.D. 13. Tirrell Frank X. 61 Kilby,res.at Chelsea

(35)

C.D.(59)1797. Trotman Louis H. salesman,178 Tremont,rm.4

D.D. 27. Trotman Louis H. salesman,178 Tremont,rm.4

" 24. Trautman Lewis H. salesman,178 Tremont,rm.4,res.19 Wabeno,Rox.

(36)

C.D.(23)883. Hirschman Harry, trimmer,18 Summer, bds.124 Union park

D.D. 800 Hirschman Harry, trimmer,18 Summer, res.124 Union pk.

" 800. Hirshman Harry,clothing trimmer,18 Summer,res.124 Union pk.st.

Mile

T-64 (gal T-27)

This cause was thence continued to the present October Term, A.D. 1904, when the following Defendant's Exceptions to Master's Report is filed:

DEFENDANT'S EXCEPTIONS TO MASTER'S REPORT.
[Filed November 12, 1904.]

And now comes the respondent in the above entitled cause and makes and files the following exceptions to the Master's Report:-

(1) The respondent excepts to so much of the Master's Finding 6 as finds that agents and employes of respondent failed to make the verification therein referred to.

(2) The respondent excepts to Master's Find 7 in so far as it finds that an actual verification from original sources of information was impossible or was not made.

(3) The respondent excepts to so much of Master's Finding 8 as finds that seven (7) of the persons therein mentioned had moved before the respondent commenced its canvass.

(4) The respondent excepts to Master's Finding 9.

(5) The respondent excepts to Master's Finding 10, and particularly to the part thereof which finds that an actual verification was impossible, and to that part which finds that the persons whose names are therein mentioned had moved prior to July 12, 1903, or July 1, 1903, or the time when attempted verifications were made.

(6) The respondent excepts to Master's Finding 11 that the names of persons and information connected therewith are inserted in two forms.

(7) The respondent excepts to so much of Master's Finding 14 as finds that the correct residence of the person there mentioned is 31 Sumner Street, Dorchester.

(8) The respondent excepts to so much of Master's Finding 15 (1) as finds that the two names there mentioned are intended for the same person.

(9) The respondent excepts to so much of Master's Finding 15 (2) as finds that the two names therein mentioned are intended to refer to the same person.

(10) The respondent excepts to so much of the Master's Finding 15 (4) as finds the time of removal.

(11) The respondent excepts to so much of Master's Finding 15 (5) as finds that the three entries there quoted are intended to refer to the same person.

(12) The respondent excepts to so much of Master's Finding 15 (7) as finds that the person therein mentioned had moved before the respondent's canvass.

(13) The respondent excepts to so much of Master's Finding 15 (8) as finds that the two names there mentioned intended to refer to the same person.

(14) The respondent excepts to Master's Finding 16.

(15) The respondent excepts to the Master's first conclusion of law.

(16) The respondent excepts to the Master's second conclusion of law.

(17) The respondent excepts to the ruling of the Master admitting in evidence hearsay statements as to what was or was not correct information.

(18) The respondent excepts to the rulings of the Master admitting in evidence hearsay statements as to dates of removal.

(19) The respondent excepts to the rulings of the Master admitting in evidence hearsay statements as to the fact of removal.

(20) The respondent excepts to the rulings of the Master declining to strike out hearsay statements as to what was or was not correct information, as to the date of removal, and as to the fact of removal after they had been admitted.

(21) The respondent excepts to the refusal of the Master to make the findings requested by it hereto attached.

(22) The respondent excepts to the failure of the Master to make the rulings of law requested by it and hereto attached.

T-66
(9 of T-28)

(23) The respondent makes again and insists upon the exceptions taken by him in the course of the trial as shown by the record.

(24) That the Master has failed to make any finding as to the amount of damage suffered by the complainant through the alleged infringement.

(25) That the Master has failed to make any finding as to whether any damage alleged to be suffered by the complainant is either serious or irreparable.

(26) That the Master has failed to make any finding as to whether the injury done to the respondent by an injunction would be disproportionate to the benefit derived by the complainant.

(27) That the Master has failed to make any finding as to the number of copies of the complainant's copyrighted book which remained in existence, or could be sold at the time of the alleged infringement, or at the time of the hearing.

(28) That the Master has failed to make any finding as to the good faith of the respondent corporation or its officers.

By its Solicitors,
GASTON, SNOW & SALTONSTALL.

On the fourteenth day of November, A.D. 1904, the following Complainant's Exceptions to Master's Report is filed:

rule

Close up

T-67

COMPLAINANT'S EXCEPTIONS TO MASTER'S REPORT.
[Filed Nov. 14, 1904.]

1. It excepts to the ruling of the Master in "Master's Note 25" that a compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call.

2. It excepts to the ruling of the Master in "Master's Note 26", that "One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct."

3. It excepts to the ruling of the Master in "Master's Note 27", that "the right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows they should be changed, to correspond with the facts, and checking them as correct when they prove to be correct".

4. It excepts to the failure of the Master to find as a conclusion of law (See Master's Note 45) that from the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied numerous names of persons occurring in the com-

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plainant's directory, but deceased, or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant from using, selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

By its Attorney,

ALEX.P.BROWNE.

rule

Close up

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On the seventeenth day of January, A.D.1905, the cause is set down for hearing and fully heard by the Court on Exceptions to Master's Report, the Honorable Clarence Hale, District Judge as aforesaid, sitting.

On the second day of February, A.D.1905, the Opinion of the Court is announced overruling the Exceptions to the Master's Report, and on the twentieth day of February, A.D.1905, the following Final Decree is entered in accordance with said opinion:

FINAL DECREE.
February 20, 1905.

This cause came on to be heard at the October Term, 1904, upon the exceptions to the master's report, and was argued by counsel for the respective parties; and now upon consideration thereof, to wit: February 20th, 1905, it is ordered, adjudged and decreed as follows, to wit: that the exceptions to the master's report are overruled and the master's report is confirmed.

And it is further ordered, adjudged and decreed that a perpetual injunction be issued against the defendant according to the opinion of this Court, filed February 2, 1905, herein.

It is further ordered, adjudged and decreed that the complainant recover of the defendant its costs of suit, but no damages or profits, the recovery of the same having been duly waived by written waiver filed in this cause by complainant herein.

By the Court,

BENJ. H. BRADLEE,
Deputy Clerk.

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From the Final Decree the complainant claims an appeal to the United States Circuit Court of Appeals for the First Circuit and gives good and sufficient security that it will prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, and said appeal is allowed accordingly.

A true record:
Attest: ALEX. H. TROWBRIDGE,
Clerk.

rule

Close up

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OPINION OF THE CIRCUIT COURT.
Feb. 2, 1905.

HALE, J. This cause has already been before the court in the matter of a preliminary injunction (129 Fed. 761). We made an interlocutory decree for a temporary injunction unless the defendant before a certain time should file a bond to the complainant in the sum of five thousand dollars, with sureties approved by the Clerk, conditioned for the payment of any sum, except costs, which might be finally decreed against the defendant in this court, or on appeal. The court further decreed that the defendant keep an account of sales of directories made by it. After the above decree, the cause again came before this court on May 17, 1904, and, under the practice in such cases, it was referred to John G. Stetson, as Master, upon the bill, answer and replication, to find the facts, and report to the court his findings of fact, his conclusions of law, and such portions of the evidence as either party might request, or as he might deem useful to the court. The master has filed a complete report, which now forms the basis of action for the court. That report, omitting the introductory portion and schedules not material to be now considered, is as follows:

[MEMORANDUM. The master's complete report is already printed in this record, pages 9 to , inclusive. The introductory portion omitted is Abbreviations and Definitions, printed pages 9 and 10. The schedules omitted are Master's Schedules A, B, C, D and E, printed pages 21 to 26 and 44 to . By direction of counsel for appellant, I do not reprint the master's report as it is incorporated in this opinion. JOHN G. STETSON, Clerk.]

[Book inserted in proof.

See last page 7 Obj in page 105

Circuit Court of the United States,

DISTRICT OF MASSACHUSETTS.

No. 1937, Equity.

SAMPSON & MURDOCK COMPANY,
COMPLAINANT,

v.

SEAVER-RADFORD COMPANY,
DEFENDANT.

MASTER'S REPORT.

[Filed in Circuit Court October 15, 1904.]

To the Honorable the Judges of the Circuit Court:

I submit the following statement of abbreviations and definitions of terms used in this report and in the schedules thereto annexed:

Abbreviations and Definitions.

C. D. Complainant's Directory, — the complainant's copyrighted Boston Directory, 1903, — alleged to be infringed.

D. D. Defendant's Directory, — the defendant's 1904 City Directory of Boston, — alleged to infringe.

Check Books. Sections or parts into which the defendant divided the complainant's general directory and its business directory for use in front-checking and drawing questions.

Front Checks. The black pencil marks which the defendant made in the check books to indicate that it had obtained information as to the names so front-checked by its original house-to-house canvass.

Blue Dots. The blue pencil dots which the defendant made in the check books to indicate that questions were to be drawn upon the names so blue-dotted.

Questions. The copies made of the names, etc., which the defendant had blue-dotted in the check books to be sent out for verification or otherwise.

C. D. (9)414. This arrangement of letters and figures in the Master's schedules denotes, Complainant's Directory, the number of the check book and the page on which a given name, etc., is to be found.

D. D. 497. The number indicates the page in the defendant's directory where a given name, etc., is to be found.

On May 17, 1904, this cause was referred to me as master upon the bill, answer and replication, to hear the evidence, find the facts and report to the court my findings of fact, my conclusions of law and such portions of the evidence as either party may request.

Mr. Alexander P. Browne represents the complainant and Mr. Thomas Hunt represents the defendant in the proceedings before me.

I have heard the evidence offered by each party in the usual order. This evidence was taken stenographically by stenographers furnished by Mr. Browne, and copies of the evidence have been delivered to counsel for each party and to me. I have heard counsel for each party, and I now report my findings of fact and conclusions of law, and will report such portions of the evidence as either party may request.

FINDINGS OF FACT.

Master's Finding 1. The following allegations of the complainant's bill of complaint are true, namely:

1. That on or before the twenty-ninth day of June, 1903, and prior to the date of the publication thereof in this or any foreign country, the firm of Sampson, Murdock & Company, of Boston, the predecessors in business of your orator, deposited in the mails within the United States, addressed to the Librarian of Congress at Washington, District of Columbia, a printed copy of the title of a certain book entitled "The Boston Directory", containing the city record, a directory of the citizens' business directory and street directory, with map No. XCIX. for the year commencing July 1, 1903, in order to copyright the same, and claimed said copyright as authors and proprietors; and that they deposited in like manner the sum of fifty cents for copyright fees, and that thereupon, on the eleventh day of July, 1903, and also before the date of publication in this or any foreign country, deposited in the mails within the

United States, addressed to the Librarian of Congress at Washington, District of Columbia, two printed copies of such copyright directory; and that said title so deposited was duly recorded by the Librarian of Congress upon the said twenty-ninth day of June, 1903, whereby they became entitled to the copyright upon said book under the laws of the United States.

2. That on the first day of October, 1903, the said firm of Sampson, Murdock & Company, for a valuable consideration and by an instrument in writing, a copy of which is hereto annexed [that is, annexed to complainant's bill], conveyed the said copyright to the complainant herein, and that the complainant by the said conveyance became and has ever since been and now is the sole owner of said copyright and of the exclusive rights thereby conferred under the laws of the United States.

3. That the two copies of the said book deposited as above set forth were printed from type set within the limits of the United States, or from plates made therefrom.

4. That the said Sampson, Murdock & Company, and the complainant as their assignee and successor in the business, have given notice of said copyright by inserting in the several copies of every edition published on the title page thereof the copyright notice required by law, in the following words, to wit: "Copyright 1903, by Sampson, Murdock & Co."

MASTER'S FINDING 2. The copyright in suit and the complainant's title to the same are good and valid.

MASTER'S FINDING 3. The defendant company within the term of the complainant's copyright and without the consent of the owners thereof has printed, published, exposed for sale and sold many copies of a book entitled "The 1904 City Directory of Boston", referred to in this report as Defendant's Directory, the complainant's copyrighted directory being referred to as Complainant's Directory.

MASTER'S FINDING 4. The defendant's directory differs from the complainant's directory in shape, size, style of type, and arrangement, containing three columns on each page instead of two, and on these accounts is not liable to be mistaken for the complainant's directory. The complainant's directory is entitled "Boston Directory 1903", and the defendant's directory is entitled "1904 City Directory of Boston".

MASTER'S FINDING 5. In obtaining material for its directory the defendant, by its agents and employés, made an original and substantial house-to-house and office-to-office canvass of the city of Boston.

MASTER'S FINDING 6. After making its original canvass the defendant by its agents and employés divided a copy of the complainant's directory into sections called "check books" and front-checked, that is, checked in front of each name in black pencil upon the pages of these check books the names which it had obtained by its original canvass, except that it did not check all the names of barbers, hairdressers, laborers and persons having no business stated in complainant's copyrighted directory. Having thus front-checked names obtained by its original canvass, the defendant by its agents and employés blue-dotted in the check books such names as its agents and employés desired to draw questions upon, and having drawn such questions sought to verify the information substantially copied from the check books by going to original sources of information; but in many instances, particularly set forth in Master's Findings 7, 10, 11 and 12, the defendant by its agents and employés failing to make such verification transferred to its directory the information contained in the complainant's copyrighted directory.

MASTER'S FINDING 7. The defendant transferred to its directory from complainant's copyrighted directory the twenty-nine (29) names and the information connected therewith shown in Master's Schedule A, annexed to this report. These names are all blue-dotted in the check books into which complainant's copyrighted directory was divided, indicating that questions were drawn upon them, but an actual verification of such questions from original sources of information was impossible as the persons represented by these names died at various times from March 3 to July 18, 1903, and were dead at the times when the attempted verifications, if any, were made.

MASTER'S FINDING 8. The defendant transferred to starred pages 50 and 51 of its directory from pages 733 to 734 of com-

plainant's copyrighted directory the thirteen (13) names and the information connected therewith shown in Master's Schedule B. None of these names were obtained on the original canvass as none of them are front-checked, and questions were not drawn upon them as none of them are blue-dotted. The persons represented by seven of those names moved from the residences or places of business given in both directories before the defendant commenced its original canvass.

MASTER'S FINDING 9. The defendant transferred to all parts of its general directory from the complainant's copyrighted directory many names and information connected therewith which it did not obtain by its original canvass, as such names are not front-checked in the check books, and which it did not obtain by information from original sources on questions drawn upon such names and information connected therewith appearing in complainant's copyrighted directory as such names are not blue-dotted in the check books.

This finding is supported by a comparison of the names on many two consecutive pages selected at random from the check books, so called, with the same names as they appear in the defendant's directory. Master's Schedule C illustrates this as to pages 81–82, 181–182, 281–282, 381–382 and 481–482. On these ten pages are shown fifteen such transfers.

MASTER'S FINDING 10. The defendant transferred to its directory from complainant's copyrighted directory the forty-six (46) names and the information connected therewith shown in Master's Schedule D, annexed to this report. These names are all blue-dotted in the check books into which complainant's directory was divided, indicating that questions were drawn upon them, but an actual verification of said questions from original sources of information was impossible as the persons represented by these names moved from the places of business or from the residences shown in both directories, at various times previously to July 12, 1903, some of them one or two years previously, and all but three, (28) Horstmeier, (38) Owen and (42) Wallberg, previously to July 1, 1903, and all of them

had so removed previously to the times when the attempted verifications, if any, were made.

MASTER'S FINDING 11. In many instances the defendant has inserted in its general directory the names of persons and information connected therewith in two forms. In one form, it has copied the names and information connected therewith from the complainant's copyrighted directory; in the other form, the names and information connected therewith were obtained from some other source. Master's Schedule E contains thirty-six (36) such instances of double insertion of names and information connected therewith. As to each person included in this schedule, the first line shows the name and information (business address and residence) as they appear in complainant's copyrighted directory; the second line shows them as they appear in defendant's directory copied from complainant's copyrighted directory; and the third line shows them as they appear the second time in defendant's directory from information obtained from some other source. None of these names were front-checked in the check books, and all of them were blue-dotted, indicating that the defendant did not obtain them and the information connected therewith by its original canvass, and that questions were drawn upon them for verification. The complainant introduced evidence tending to show that there were errors in these names or in the information connected therewith as the names and information appeared in its copyrighted directory, which errors the defendant copied into its directory, and that these names and information connected therewith are correctly given by the defendant in the second form in which they appear in its directory. That the defendant obtained such information, namely, that appearing in the second form in its directory, from original sources and upon special inquiry, corroborates complainant's evidence as above stated; and I find as a fact that in the thirty-six (36) instances enumerated in Master's Schedule E there were errors in the names or information, or both, as they ap-

peared in the complainant's copyrighted directory, and that the defendant copied these errors into its directory.

MASTER'S FINDING 12. The complainant inserted in its list of Public Offices, Halls, Blocks, etc., in its copyrighted directory, on page 66, the fictitious name and location, McKinley Hall, 24 W. Concord. This was a trap intentionally set to catch copyists, and the defendant fell into it, transferring to its list of Office Buildings, Halls, Blocks, Theatres, and Public Buildings, on page 173 of its directory, this fictitious name and location, McKinley Hall, 24 W. Concord St.

MASTER'S FINDING 13. The complainant inserted in its Business Directory, making a part of its copyrighted directory, on page 1969, under the title of Boots and Shoes (Retail Dealers), the fictitious name and location, Rogers Robert L. 312 Maverick, and on page 2151, under the title of Hairdressers, the fictitious name and location, Jones G. W. 1650, Dorchester av. The defendant copied both these fictitious names and locations from complainant's copyrighted directory and inserted them in its Business Directory, making a part of its 1904 City Directory of Boston, Rogers Robert L. 312 Maverick, E. B., on page 1774, under the title of Shoe Dealers, and Jones G. W., 1650 Dorchester av. Dor., on page 1613, under the title of Barbers.

MASTER'S FINDING 14. The defendant copied the following name and residence into its general directory, making a part of its 1904 City Directory of Boston, from complainants copyrighted directory:

C. D. (58)	179.	Thomas Leo B. pastor Stoughton-st Baptist church, Dor. h. 31 Stoughton, do.
D. D.	1**.	Thomas Leo B. pastor, Stoughton st Baptist church Dor res. 31 Stoughton, do.
C. D. (3)	1994.	Thomas Leo B. (B), 31 Stoughton
D. D.	1633	(Business Directory, under the heading Clergymen). Thomas Leo B. (B.) 31 Sumner, Dor.

The correct residence is 31 Sumner, Dorchester.

This name is blue-dotted in check book 58 from complainant's general directory and is not front-checked in check book 3 from

complainant's business directory, both indicating that the defendant did not obtain this name and residence by its original canvass and that questions were drawn upon this name for verification from original sources of information. The defendant did obtain the correct residence, 31 Sumner, Dorchester, and inserted it in its business directory under the title, Clergymen, as shown by the fourth line above, but copied into its general directory the incorrect address, 31 Stoughton, Dorchester, as shown by the first and second lines.

Master's Finding 15. The defendant copied the following names and information into its Business Directory, making a part of its 1904 City Directory of Boston, from complainant's copyrighted directory:

(1)

Business heading in both directories, Architects.

C. D. (1) 1949. Briscoe Maurice B. 120 Boylston
D. D. 1604. Briscoe Maurice B. 120 Boylston
D. D. 1604. Biscoe Maurice B. 110 Boylston

This name is blue-dotted in check book 1, Business, and the correct spelling of the name and the correct business location were obtained by defendant as shown in the third line above and entered, but the defendant copied into its directory the incorrect spelling and the incorrect location from complainant's copyrighted directory as shown in the first and second lines.

(2)

Business headings, Boot & Shoe Dealers in complainant's and Shoemakers in defendant's directory.

C. D. (2) 1966. Masaree Arthur, 97 W. Concord
D. D. 1776. Masaree Arthur, 97 W. Concord
" 993 (General Directory). Macaree Arthur, cobbler, 99 W. Concord, res. 43 Langdon, Rox.

This name is not front-checked in check book 2, Business, indicating that it was not obtained on original canvass. The correct spelling of the name and the correct business location were obtained by defendant as shown by the third line above, but the defendant copied into its directory the incorrect spelling and the incorrect location from complainant's copyrighted directory as shown in the first and second lines.

(3)

Business heading in both directories, GROCERS.

C. D. (6) 2046. Kovitzky Simon, 12 Morton

D. D. 1672. Kovitzky Simon, 12 Morton

" 912s (General Directory). Koritzky Simon, crockery and coal agent, 12 Morton, res. do.

The defendant obtained the correct spelling of this name and inserted it in his general directory as appears by the third line above, but copied into its business directory the incorrect spelling as shown by the first and second lines.

(4)

Business heading in both directories, LEATHER DEALERS.

C. D. (8) 2086. Magoun Leather Co. 59 High

D. D. 1708. Magoun Leather Co. 59 High

This company moved from 59 High Street before defendant's original canvass. The name is blue-dotted in check book 33 from complainant's general directory, is not front-checked in check book 8 from complainant's business directory, and does not appear in defendant's general directory. This name and location were copied by the defendant into its business directory from complainant's copyrighted directory.

(5)

Business heading in both directories, REAL ESTATE AGENTS.

C. D. (11) 2151. Jewell Albert L. 209 Wash. rm. 21

D. D. 1762. Jewell A. L. 209 Wash. rm. 21

" 861 (General Directory). Jewell Albert L. real estate, 19 Congress, rm. 95, tel. res. at Brookline

The defendant obtained the correct business location of this man and inserted it in its general directory as appears by the third line above but copied into its business directory the incorrect location from complainant's copyrighted directory as shown by the first and second lines.

(6)

Business heading in both directories, RESTAURANTS.

C. D. (11) 2110*. Patten F. E. Mrs. 2280 Dorch. av.

D. D. 1766. Patten F. E. Mrs. 2280 Dorchester av. Dor.

" 1285 (General Directory). Patten F. E. lunch room, 2270 Dorchester av. Dor. res. 2260 do.

This name is not front-checked in check book 11, Business. It is blue-dotted in check book 44, where the correct location is given. The defendant obtained the correct location and inserted it in its general directory as appears by the third line above, but copied the incorrect location into its business directory from complainant's copyrighted directory as shown by the first and second lines.

(7)

Business heading in both directories, TEACHERS, ELOCUTION.

C. D. (12) 2139. Warren Edward, 176 Tremont

D. D. 1795. Warren Edward, 176 Tremont

This man moved from 176 Tremont before defendant's original canvass. The name is blue-dotted in check book 60 from complainant's general directory, is not front-checked in check book 12 from complainant's business directory and does not appear in defendant's general directory. The defendant copied this name and location into its business directory from complainant's copyrighted directory.

(8)

Business heading in both directories, TEACHERS, MUSIC.

C. D. (12) 1240*. Byrnes Alva, 162 Boylston

D. D. 1796. Byrnes Alva, 162 Boylston

" 393 (General Directory). Byrnes Alma, music teacher, res. Union ter. J. P.

This name is front-checked in check book 6 from complainant's general directory and appears in complainant's and in defendant's general directory with the correct spelling, Alma. It is also front-checked in check book 12 taken from complainant's business directory where it appears with the incorrect spelling, Alva. The defendant obtained the correct spelling, Alma, either from an original source or from complainant's general directory and inserted it in its general directory as shown by the third line above but copied the incorrect spelling, Alva, into its business directory from complainant's copyrighted directory as shown by the first and second lines.

MASTER'S FINDING 16. Many instances of similarity in the forms of entry of special names and information in the two directories are indications of a general system of copying by the defendant into its directory from complainant's copyrighted directory, of which instances the following are illustrations:

(1)

C. D. (3) 170. Belknap George E. chairman Nautical Training School Commission, 110 State House, h. at Brookline

D. D. 292. Belknap George, chairman, Nautical Training School Commission, 110 State House, res. at Brookline

(2)

C. D. (4) 228. Bradlee Benjamin H. deputy clerk, U. S. circuit court, 112 P. O. bldg. h. at Newton Centre

D. D. 339. Bradlee Benjamin H. dep. clerk, U. S. circuit court, 112 P. O. bldg. res. at Newton Centre

(3)

C. D. (4) 228. Bradlee Roger W. clerk, 40 Water, rm. 15, bds. Blue Hill av. cor. Austin, Mat.

D. D. 339. Bradlee Roger W. clerk, 40 Water, rm. 15, res. Blue Hill av. cor. Austin, Mat.

(4)

C. D. (45) 1442. Pennock A. N. clockmaker, 147 Tremont, h. 250 Mass. av.

D. D. 1295. Pennock A. N. clockmaker, 147 Tremont, res. 250 Mass. av.

(5)

C. D. (45) 1442. Pennock F. G. foreman, 394 Atlantic av.

D. D. 1295. Pennock F. G. foreman, 394 Atlantic av.

(6)

C. D. (45) 1442. Pennock Artemas S. pres. 442 Tremont bldg. h. at S. Braintree

D. D. 1295. Pennock Artemas S. pres. 442 Tremont bldg. res. at S. Braintree

(7)

C. D. (59) 1798. Trowbridge Alexander H. clerk, U. S. circuit court, 112 P. O. bldg. h. at Brookline

D. D. 27**. Trowbridge Alexander H. clerk, U. S. Circuit Court, 112 P. O. bldg. res. at Bro.

(8)

C. D. (59) 1798. Trowbridge Herbert W. clerk, Custom House and accountant, 82 Devonshire, rm. 28, h. at Stoughton

D. D. 27**. Trowbridge Herbert W. clerk, Custom House, and accountant, 82 Devonshire, rm. 28, res. at Stoughton

CONCLUSIONS OF LAW.

FIRST: The complainant is entitled to an injunction against the defendant from using or selling or offering for sale any copy of its 1904 City Directory of Boston so long as it contains

(1) in its list of Office Buildings, Halls, etc., on page 173, the name and location McKinley Hall, 24 W. Concord St.,

(2) in its general directory the names and information connected therewith set out in Master's Findings 7, 8, 9, 10, 11 and 14,

(3) in its general directory the names and the information referred to in Master's Finding 9 as not front-checked in the check books and so not obtained by original canvass, and not blue-dotted and so not obtained from original sources upon questions drawn, but which are not included in Master's Schedule C, and

(4) in its business directory the fictitious names and locations Rogers Robert L. 312 Maverick, on page 1969, and Jones G. W. 1650 Dorchester av., on page 2151, and the sixteen (16) names and information in the form described in Master's Findings 15 and 15A.

SECOND: The complainant is entitled to a decree for an accounting for profits derived by the defendant from, and by reason of, its incorporating in its 1904 City Directory of Boston the names and information specified in the above first conclusion of law in paragraphs (1), (2), (3) and (4), and from the manufacture and sale of said directory in so far as such profits are attributable to such incorporating therein of said names and information.

Respectfully submitted,

JOHN G. STETSON, *Master.*

MASTER'S SCHEDULE A, Finding 7.

Deaths Before Attempted Verifications.

(1)

C. D. (2) 111. Armstead, L. H. clerk, 43 Franklin, h. at Waltham
D. D. 242. Armstead, L. H. clerk, 43 Franklin, res. at Waltham

(2)

C. D. (9) 414. Cooke George P. designer, 110 Summer, rm. 21, h. at Newtonville
D. D. 497. Cooke George P. designer, 110 Summer, rm. 21, res. at Newtonville

(3)

C. D. (10) 437. Crane Charles F. clerk, 77 Wash. north, h. at Camb.
D. D. 517. Crane Charles F. clerk, 77 Wash. north, res. at Camb.

(4)

C. D. (12) 517. Dexter George, banker and broker, 10 State, h. 1148 Adams, L. M.
D. D. 584. Dexter George, banker and broker, 10 State, res. 1148 Adams, L. M.

(5)

C. D. (17) 653. Fitzgerald William J. shipper, 64 Wash. bds. 68 Moulton, Chsn.
D. D. 700. Fitzgerald, William J. shipper, 64 Wash. res. 68 Moulton, Chsn.

(6)

C. D. (19) 719. Gearin Stephen J. boat joiner, h. 274 E. Cottage, Dor.
D. D. 37. Gearin Stephen J. boat joiner, res. 274 E. Cottage, Dor.

(7)

C. D. (19) 723. Gerrish George H. h. 73 Kendall
D. D. 40. Gerrish George H. res. 73 Kendall, Rox.

(8)

C. D. (20) 778. Greenleaf David L. clerk, 55 Blackstone, bds. at Everett
D. D. 88. Greenleaf David L. clerk, 55 Blackstone, res. at Everett

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Twenty-one (21) other instances of deaths before attempted verifications are omitted in printing this schedule.

MASTER'S SCHEDULE B, Finding 8.

Names Neither Front-Checked nor Blue-Dotted.

(1)

C. D. (19) 733. Gilman Charles B. mechanical engineer, h. 3239 Wash. J. P.
D. D. 50*. Gilman Charles B. mechanical engineer, res. 3239 Wash. J. P.

(2)

C. D. (19) 733. Gilman Caribel, teacher, bds. 5 Alveston, J. P.
D. D. 50*. Gilman Caribel, teacher, res. 5 Alveston, J. P.

(3)

C. D. (19) 733. Gilman Edward C. foreman, h. 15 Charles, Dor.
D. D. 50*. Gilman Edward C. foreman, res. 15 Charles, Dor.

(4)

C. D. (19) 733. Gilman Grace M. teacher, bds. 5 Alveston, J. P.
D. D. 50*. Gilman Grace M. teacher, res. 5 Alveston, J. P.

(5)

C. D. (19) 733. Gilman Joseph M. salesman, 103 Medford, Chsn. h. at Greenwood
D. D. 50*. Gilman Joseph M. salesman, 103 Medford, Chsn. res. at Greenwood

(6)

C. D. (19) 733. Gilman Louis J. h. 1 Oakville av. Rox.
D. D. 50*. Gilman Louis J. res. 1 Oakville av. Rox.

(7)

C. D. (19) 733. Gilman William H. boots and shoes, 94 Cambridge, h. 27 S. Russell
D. D. 50*. Gilman William H. boots and shoes, 94 Cambridge, res. 27 S. Russell

(8)

C. D. (19) 734. Gilmore Ada Wells, music teacher, 179 Princeton, E. B. h. do.
D. D. 50*. Gilmore Ada Wells, music teacher, 179 Princeton, E. B. res. do.

(9)

C. D. (19) 734. Gilmore Annie Mrs. grocer, 465 E. Eighth, S. B. h. do.
D. D. 50*. Gilmore Annie Mrs. grocer, 465 E. Eighth, S. B. res. do.

(10)

C. D. (19) 734. Gilmore John. foreman machinist, 100 Condor, E. B. h. 206 Lexington, do.
D. D. 51*. Gilmore John, foreman machinist, 100 Conder, E. B. res. 206 Lexington, do.

(11)

C. D. (19) 734. Gilpatric Edgar F. dental student, bds. 45 Forest, Rox.
D. D. 51*. Gilpatric Edgar F. dental student, res. 45 Forest, Rox.

(12)

C. D. (19) 734. Gilpatrick Samuel S. florist, 1421 Tremont, Rox. h. 61 Terrace, do.
D. D. 51*. Gilpatrick Samuel S. florist, 1421 Tremont, Rox. res. 61 Terrace, do.

(13)

C. D. (19) 734. Gilpatrick T. B. Mrs. florist, 1421 Tremont, Rox. h. 61 Terrace, do.
D. D. 51*. Gilpatrick T. B. Mrs. florist, 1421 Tremont, Rox. res. 61 Terrace, do.

MASTER'S SCHEDULE C, Finding 9.

Names Neither Front-Checked Nor Blue-Dotted.

Pages 81 and 82.

C. D. (1) 81. Addison William S. clerk, pier 1, foot Sleeper, bds. 24 Symmes, Ros.
D. D. 216. Addison William S. clerk, res. 24 Symmes, Ros.

Pages 181 and 182.

C. D. (3) 181. Berman Charles J. inspector, city yard, E. Eagle, E. B. bds. 170 London, do.
D. D. 301. Berman Charles, inspector, res. 170 London, E. B.

C. D. (3) 182. Bernstein Charles D. clerk, 14 Wash. bds. 30 Lowell
D. D. 301. Bernstein Charles D. res. 30 Lowell

C. D. (3) 182. Bernstein Morris H. teamster, 32 Parmenter, h. 42 Mt. Vernon, Chsn.
D. D. 301. Bernstein Morris H. teamster, res. 42 Mt. Vernon, Chsn.

C. D. (3) 182. Berrigan Edward W. carpenter, 114 Broad, bds. 192 Neponset av. Dor.
D. D. 302. Berrigan Edward W. carpenter, 114 Broad, res. 192 Neponset av. Dor.

C. D. (3) 182. Berrill Henry W. clerk, 101 Milk, rm. 602, bds. 101 Walnut av. Rox.
D. D. 312. Berrill Henry W. clerk, res. 101 Walnut av. Rox.

C. D. (3) 182. Berry Charles H. painter, 25 Gurney, Rox. h. 61 Summit av. Br.
D. D. 302. Berry Charles H. painter, res. 61 Summit av. Br.

Pages 281 and 282.

C. D. (6) 281. Burns Henry J. paper hanger, h. 126 Everett, E. B.
D. D. 384. Burns Henry J. paper hanger, res. 126 Everett, E. B.

C. D. (6) 282. Burns John F. printer, 393 Chelsea, E. B. bds. 374 Bremen, do.
D. D. 384. Burns John F. printer, res. 374 Bremen, E. B.

C. D. (6) 282. Burns John H. coachman, h. 328 Newbury
D. D. 384. Burns John H. coachman, res. 328 Newbury

C. D. (6) 282. Burns Joseph P. clerk, bds. 25 Fulda, Rox.
D. D. 385. Burns Joseph P. clerk, res. 25 Fulda, Rox.

Pages 381 and 382.

C. D. (8) 382. Colbert William J. news agent, 49 Arch, h. 11 Telegraph, S. B.
D. D. 469. Colbert William J. news agent, res. 11 Telegraph, S. B.

C. D. (8) 382. Colburn Fred R. clerk, 620 Atlantic av. rm. 16, bds. 2160 Centre, W. R.
D. D. 469. Colburn Fred R. clerk, res. 2160 Centre, W. R.

Pages 481 and 482.

C. D. (11) 481. Damm Martin F. musician, h. 29 Sheridan, J. P.
D. D. 553. Damm Martin F. musician, res. 29 Sheridan, J. P.

C. D. (11) 481. Damrell Thomas, carpenter, 1272 Washington, h. 86 Brunswick, Rox.
D. D. 554. Damrell Thomas, carpenter, 1272 Wash. res. 86 Brunswick

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MASTER'S SCHEDULE D, FINDING 10.

REMOVALS BEFORE ATTEMPTED VERIFICATIONS.

(1)

C. D. (1) 76. Abrams Julius, grocer, 326 Blue Hill av. Rox. h. 60 Bartlett, do.
D. D. 212. Abrams Julius, grocer, 326 Blue Hill av. Rox. res. 60 Bartlett, do.

(2)

C. D. (1) 81. Adamson Thomas W. grocer, 1825 Dorchester av. Dor. h. do.
D. D. 216. Adamson Thomas W. grocer, 1825 Dorchester av. Dor. res. do.

(3)

C. D. (3) 183. Berry J. Fred (Berry & Ferguson) 141 Milk and 45 Medford, Chsn. h. at Somerville
D. D. 303. Berry J. Fred (Berry & Ferguson) 141 Milk and 45 Medford, Chsn. res. at Som.

(4)

C. D. (6) 281. Burns Harry C. draughtsman, 53 State, rm. 1110, bds. at Brookline
D. D. 381. Burns Harry C. draughtsman, 53 State, rm. 1110, res. at Brookline

(5)

C. D. (6) 294. Cady Francis E. asst. Mass. Inst. Tech. h. at Brookline
D. D. 395. Cady Francis E. asst. Mass. Inst. Tech. res. at Brookline

(6)

C. D. (7) 336. Chadwick John, druggist, rms. 156 Warren av.
D. D. 431. Chadwick John, druggist, res. 156 Warren av.

(7)

C. D. (9) 430. Coulthurst James C. clerk, 683 Atlantic av. rm. 65, bds. at Danvers
D. D. 510. Coulthurst James C. clerk, 683 Atlantic av. rm. 65, res. at Danvers

(8)

C. D. (11)	492.	Davis Morgan T. supt. 114 Dudley, Rox. h. 22 Greenville, do.
D. D.	863.	Davis Morgan T. supt. 114 Dudley, Rox. res. 22 Greenville, do.

Thirty-eight (38) other instances of removals before attempted verifications are omitted in printing this schedule.

MASTER'S SCHEDULE E. Finding 11.

Errors Copied from Complainant's Copyrighted Directory into Defendant's Directory.

(1)

C. D. (1)	98.	Ames Herbert F. salesman, 39 India, h. at Everett
D. D.	231.	Ames Herbert F salesman, 39 India, res. at Everett
"	"	Ames Bertrand F. salesman, 39 India, res. at Everett

(2)

C. D. (3)	168.	Beckwith Leslie A. clerk, 168 Devonshire, rms. 7 Follen
D. D.	290.	Beckwith Leslie A. clerk, 168 Devonshire, res. 7 Follen
"	"	Beckwith L. W. clerk, 168 Devonshire, res. 7 Follen

(3)

C. D. (6)	303.	Campbell Charles C. printer, 324 Wash. h. at Somerville
D. D.	403.	Campbell Charles C. printer, 324 Wash. res. at Som.
"	404.	Campbell George C. printer, 324 Wash. res. at Som.

(4)

C. D. (7)	326.	Carver George A. salesman, 30 Winter, h. 501 Shawmut av.
D. D.	422.	Carver George A. salesman, 30 Winter, res. 501 Shawmut av.
"	"	Carver George H. clerk, res. 501 Shawmut av.

(5)

C. D. (12)	508.	Dennett Jarvis, floorwalker, 5 Winter, h. 215 Heath, Rox.
D. D.	576.	Dennett Jarvis, floorwalker, 5 Winter, res. 215 Heath, Rox.
"	636.	Dennett James, buyer, 5 Winter, res. 215 Heath

(6)

C. D. (17)	676.	Forte Frank, hairdresser, 378 Atlantic av. h. 152 Albany
D. D.	1*.	Forte Frank, hairdresser, 378 Atlantic av. res. 152 Albany
"	"	Forti Frank, hairdresser, 378 Atlantic av. res. 153 Auburn

(7)

C. D. (18)	707.	Gallivan Timothy R. clerk, 77 Bedford, bds. at Braintree

D. D.	27*.	Gallivan Timothy, R. clerk, 77 Bedford, res. at Braintree
"	28.	Galvin Timothy R. salesman, 77 Bedford, res. at Braintree
		(8)
C. D. (19)	717.	Gavaghan Michael J. jr. boilermaker, h. 331 Paris, E. B.
D. D.	36*.	Gavaghan Michael J. jr. boilermaker, res. 331 Paris, E.B.
"	"	Gavaghan Thomas F. machinist, res. 331 Paris, E. B

Twenty-eight (28) other instances of errors copied from complainant's copyrighted directory into defendant's directory are omitted in printing this schedule.

August 26, 1904. The foregoing, except as corrected in accordance with Master's Notes 35, 38, 41 and 44, was submitted to counsel for both parties, Mr. Browne and Mr. Hunt, as a first draft report to be retained in the master's office till Thursday, September 15, 1904.

Counsel for both parties filed objections to said first draft report, entitled as follows: "Respondent's Objections to Master's Report", filed August 30, 1904, "Respondent's further Objections to Master's Report," filed September 2, 1904, and "Complainant's Action on Master's Draft Report," filed September 15, 1904. I have inserted in these papers Master's Notes 1 to 48, inclusive, showing my action thereon, and explaining such action in some particulars. Except so far as these notes modify my report, I overrule the objections of both parties. These objections with Master's notes inserted are as follows: —

RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.

[Filed with the Master August 30, 1904.]

(1) The respondent objects to so much of Master's Finding 6 as finds that agents and employés of respondent failed to make the verification therein referred to.

(2) The respondent objects to Master's Finding 7 in so far as it finds that an actual verification from original sources of information was impossible or was not made.

(3) The respondent objects to so much of Master's Finding 8 as finds that seven (7) of the persons therein mentioned had moved before the respondent commenced its canvass.

(4) The respondent objects to Master's Finding 9.

(5) The respondent objects to Master's Finding 10, and particularly to the part thereof which finds that an actual verification was impossible, and to that part which finds that the persons whose names are therein mentioned had moved prior to July 12, 1903, or July 1, 1903, or the time when attempted verifications were made.

(6) The respondent objects to Master's Finding 11 that the names of persons and information connected therewith are inserted in two forms.

(7) The respondent objects to so much of Master's Finding 14 as finds that the correct residence of the person there mentioned is 31 Sumner Street, Dorchester.

(8) The respondent objects to so much of Master's Finding 15 (1) as finds that the two names there mentioned are intended for the same person.

(9) The respondent objects to so much of Master's Finding 15 (2) as finds that the two names therein mentioned are intended to refer to the same person.

(10) The respondent objects to so much of the Master's Finding 15 (4) as finds the time of removal.

(11) The respondent objects to so much of Master's Finding 15 (5) as finds that the three entries there quoted are intended to refer to the same person.

(12) The respondent objects to so much of Master's Finding 15 (7) as finds that the person therein mentioned had moved before the respondent's canvass.

(13) The respondent objects to so much of Master's Finding 15 (8) as finds that the two names there mentioned intended to refer to the same person.

(14) The respondent objects to Master's Finding 16.

(15) The respondent objects to the Master's first conclusion of law.

(16) The respondent objects to the Master's second conclusion of law.

(17) The respondent objects to the ruling of the Master admitting in evidence hearsay statements as to what was or was not correct information.

(18) The respondent objects to the rulings of the Master admitting in evidence hearsay statements as to dates of removal.

(19) The respondent objects to the rulings of the Master admitting in evidence hearsay statements as to the fact of removal.

(20) The respondent objects to the rulings of the Master declining to strike out hearsay statements as to what was or was not correct information, as to the date of removal, and as to the fact of removal after they had been admitted.

(21) The respondent objects to the refusal of the Master to make the findings requested by it hereto attached.

(22) The respondent objects to the failure of the Master to make the rulings of law requested by it and hereto attached.

(23) The respondent makes again and insists upon the objections taken by him in the course of the trial as shown by the record.

[MASTER'S NOTE 1. Upon consideration of the above twenty-three (23) objections, I make no changes in my draft report; but I consider the findings requested in paragraph 22 and the rulings of law requested in paragraph 23, and make notes therein showing, and to some extent explaining, my action thereon.]

By its Solicitors,

GASTON, SNOW & SALTONSTALL.

RESPONDENT'S REQUEST FOR FINDINGS.

[ATTACHED TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.]

The respondent requests the following findings of facts:

* * * * * * * * * *

FOURTH: There has been no copying of the complainant's book by the respondent except in so far as the method of draw-

ing questions from the complainant's book adopted by the respondent may amount as a matter of law to copying.

[MASTER'S NOTE 2. I am unable to make this finding in view of the facts shown in Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15, 15A and 16.]

FIFTH: The respondent believed in good faith that it had the right to make such use of the complainant's book as it has made, and had been so advised by counsel.

[MASTER'S NOTE 3. The defendant is a corporation and as such could act only through its officers, agents and employés and could have no belief. It must be judged by the acts of its officers, agents and employés in its behalf. Some of its agents believed that it could lawfully use complainant's copyrighted directory to front-check such names as it had obtained information upon by its original canvass, to blue-dot such names, not front-checked, as it desired information upon, to draw questions on such names, which consisted in copying such names, and the information connected therewith, from complainant's copyrighted book on question slips, to ascertain from complainant's copyrighted book original sources of information, and to go to such original sources of information and verify, or correct if incorrect, the information contained on the question slips, and that it could lawfully incorporate in its directory the information so verified or corrected. If the defendant had made such use only of complainant's copyrighted directory, and had incorporated in its directory only such information as it so verified or corrected, I could not have made Master's Findings 7 to 16 inclusive, and 15A. In some way, however, and it is not important to determine in what way, the defendant did the copying set forth in those findings.]

SIXTH: The respondent has actually expended in compiling, printing and binding its directory about forty thousand (40,000) dollars.

[MASTER'S NOTE 4. I find as above requested.]

SEVENTH: The issue of an injunction such as is asked for would mean the total destruction of the respondent's investment in its directory.

[MASTER'S NOTE 5. I cannot say as to this; such an injunction as I find the complainant is entitled to by my first conclusion of law on page 12, would prevent the further use or sale of defendant's 1904 City Directory of Boston, so long as it contained the matters specified in said first conclusion of law.]

EIGHTH: There were at the time of the publication of the respondent's book, and are now, only 180 copies of the complainant's copyrighted book remaining for sale, and there is no sale for these. (Mr. Murdock's evidence, pages 398, 399.)

[MASTER'S NOTE 6. I find as requested.]

NINTH: The respondent made a *bona fide* canvass of the City of Boston in the course of compiling its book, employing for that purpose large numbers of men, and this canvass extended over a period of between four and six months.

[MASTER'S NOTE 7. I find as requested. See Master's Finding 5, page 4.]

TENTH: The general directory of the respondent's book contains some 50,000 more names than the general directory of the complainant's book.

[MASTER'S NOTE 8. Roughly speaking, yes.]

ELEVENTH: The street directory of the respondent's book contains several hundred more names than the street directory of the complainant's book, and also much additional information with reference to the streets. The complainant makes no claim of infringement in the street directory.

[MASTER'S NOTE 9. Roughly speaking, yes.]

TWELFTH: The respondent's general directory states whenever a person mentioned in it has a telephone, which is information not given by the complainant's directory.

[MASTER'S NOTE 10. Roughly speaking, yes.]

THIRTEENTH: The business directory of the respondent's book is, to a large extent, arranged under different headings from that of the complainant's book.

[MASTER'S NOTE 11. Roughly speaking, yes.]

FOURTEENTH: The number of names in the complainant's book, from which questions were drawn by the respondent, is about twelve per cent of the entire number of names therein contained (Mr. Hyde's evidence, page 350 — questions drawn on seventy-five per cent of the blue-dotted names).

[MASTER'S NOTE 12. Perhaps so. I have not made a close estimate of the percentage, and it is not material that I should do so.]

FIFTEENTH: Ninety per cent of the errors contained in the complainant's book in connection with names from which questions were drawn, have been corrected by the respondent.

[MASTER'S NOTE 13. I cannot say as to this.]

SIXTEENTH: I find that in those cases in which the respondent went to the complainant's book for information to direct it

to original sources of information, it actually made an independent investigation of the original sources of information in substantially all cases [MASTER'S NOTE 14. I cannot find this, considering the whole evidence before me. See Master's Findings 7, 10 and 14], and that in the remaining cases, if any, where no such investigation was made, this occurred by reason of the carlessness or fault of the individual canvassers [MASTER'S NOTE 15. The individual canvassers were the employés of the defendant and if through their carelessness or fault it transpired that the defendant inserted in its directory names and information copied from complainant's copyrighted directory, the defendant is responsible for such copying], and in disobedience to the instructions given by the respondent to its canvassers [MASTER'S NOTE 16. Some of the defendant's agents and employés gave instructions to defendant's canvassers and if from disobedience of the instructions so given it transpired that the defendant inserted in its directory names and information copied from complainant's copyrighted directory, the defendant is responsible for such copying].

SEVENTEENTH: I find that the respondent constantly and emphatically prohibited all of its employés from making any use of the complainant's book except for the purpose of drawing questions from it.

[MASTER'S NOTE 17. Some of the defendant's agents frequently and emphatically prohibited others of defendant's employés from making any use of complainant's copyrighted directory except for the purpose of drawing questions from it.]

EIGHTEENTH: The respondent has produced at the hearing the copy of the complainant's directory, which indicates the exact number of names checked and blue-dotted. It has produced large quantities of the original copy of its own book, and offered to produce the whole of such copy, which was not actually produced only because of its great bulk. It has also produced the original circulars, and some of the original schedules used by it in obtaining original information.

[MASTER'S NOTE 18. I find as above requested.]

NINETEENTH: The respondent put upon the stand as wit-

nesses eight or nine of the men employed by it as canvassers, and six of the women employed by it in office work, two of whom had acted as superintendents. It offered to produce any other canvassers and any other women employed by it whom counsel for the complainant might call for, and a stipulation signed by both counsel has been filed that the number of canvassers and that the number of women employed is so great as to make it impracticable and inconvenient to call them all as witnesses, and that no inference should be drawn against the respondent by reason of its failure to call as witnesses any others.

[MASTER'S NOTE 19. I find as above requested.]

TWENTIETH: The complainant's copyrighted book contains ten fictitious names, of which four are in the general directory. (Mr. Murdock, page 49.) There is no evidence that seven of these ten appear in the respondent's book at all.

[MASTER'S NOTE 20. I find as requested.]

TWENTY-FIRST: There is no evidence that any fictitious name appears in the respondent's general directory or in its street directory.

[MASTER'S NOTE 21. I find as requested.]

TWENTY-SECOND: The three alleged fictitious names which appear in the respondent's business directory and list of halls appear there, because questions were drawn on them from the complainant's book which were not correctly investigated.

[MASTER'S NOTE 22. Three alleged fictitious names appear in respondent's business directory and list of halls, and these names and information connected therewith were not and could not be verified. See Master's Findings 12 and 13.]

TWENTY-THIRD: I find that the complainant can suffer no legal damage hereafter from the further sale of the respondent's book.

[MASTER'S NOTE 23. I cannot find as above requested; it is my opinion that the fact is otherwise. Such damages, however, if any, may be recovered in a civil action brought under Rev. Stat., Sect. 4964, as amended March 3, 1891, 26 Stat. 1109; they cannot be recovered in the present case by bill in equity for an injunction under which profits accruing to the infringer may be recovered, but not damages in addition thereto, as upon a bill in equity for an injunction for infringement of Letters Patent.]

TWENTY-FOURTH: The new directory of the complainant's for the year 1904 was published by them early in the month of July, 1904, prior to the conclusion of the hearings before me in this case.

[MASTER'S NOTE 24. I find as requested.]

RESPONDENT'S REQUESTS FOR RULINGS.

[ATTACHED TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.]

In the above-entitled cause the respondent requests the master to rule as follows:

(1) A compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call. *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 129 Fed. Rep. 761; *Dun* v. *International Mercantile Agency*, 127 Fed. Rep., page 172; *Colliery Engineering Co.* v. *Ewald*, 126 Fed. Rep. 922; *Edw. Thompson Co.* v. *American Law Book Co.* 122 Fed. Rep. 922; *Moffatt* v. *Gill*, 86 Law Times Rep. 405.

[MASTER'S NOTE 25. I rule as above requested.]

(2) One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct. *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 129 Fed. Rep. 761; *Dun International Mercantile Agency*, 127 Fed. Rep 172; *Colliery Engineering Co.* v. *Ewald*, 126 Fed. Rep. 922; *Edw. Thompson Co.* v. *American Law Book Co.*, 122 Fed. Rep. 922; *Moffatt* v. *Gill*, 86 Law Times Rep. 404.

[MASTER'S NOTE 26. I rule as requested; but the compiler must go to the original sources of information, must ascertain how far the existing facts concur with the statements of the first directory and must print only what by means of his own investigation he has found to be correct.]

(3) The right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows they should be changed to correspond with the facts, and checking them as correct when they prove to be correct.

[MASTER'S NOTE 27. I rule as above requested.]

(4) The utmost legal damage which the plaintiff in this case can sustain by reason of the publication of an infringing book cannot (in view of the fact that there can be no further edition of its copyrighted book) exceed the entire value of all copies remaining in its hands for sale.

[MASTER'S NOTE 28. No damages can be recovered in this case which is upon a bill in equity for an injunction for an infringement of a copyright under which profits accruing to the infringer may be recovered, but not damages in addition thereto, as upon a bill in equity for an infringement of Letters Patent. See Master's Note 23.]

(5) There is no evidence to warrant a finding of error or of the date of removal in any case where the only evidence comes from witnesses who admit that they have no knowledge upon the subject except such as is derived from hearsay.

[MASTER'S NOTE 29. I rule as above requested.]

RESPONDENT'S FURTHER OBJECTIONS TO MASTER'S REPORT.

[FILED WITH THE MASTER SEPTEMBER 2, 1904.]

And now comes the respondent in the above-entitled cause, and prior to September 15, the date set by the Master, files with the Master the following further objections to his report:

FIRST: That the Master has failed to make any finding as to the amount of damage suffered by the complainant through the alleged infringement.

[MASTER'S NOTE 30. No question of damages is involved in the present reference. This is a reference preliminary to an interlocutory

decree which will be final so far as it concerns an injunction; an order for an accounting for profits is usually incorporated in such a decree. If the defendant has infringed, as found by me in Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15 and 15A, in which are specified 159 cases of copying by the defendant from complainant's copyrighted directory, namely:

In Finding	7,	Schedule	A,	29 cases,
" "	8,	"	B,	13 "
" "	9,	"	C,	15 "
" "	10,	"	D,	46 "
" "	11,	"	E,	36 "
" "	12,			1 case,
" "	13,			2 cases,
" "	14,			1 case,
" "	15,			8 cases,
" "	15A,			8 "

and has also infringed by copying, as found by me in Master's Finding 9, in a large number of cases not specifically specified, it logically follows that the defendant should be enjoined as stated by me in my first conclusion of law, on page 12 of this report. The profits to be recovered may be determined on a reference to be made a part of or to follow the decree for injunction. It is not my duty to determine these profits on this reference. The damages, if any, resulting from the infringement, may be determined in a civil action under Rev. Stat. 4964, as amended March 3, 1891. See Master's Notes 23 and 28.]

SECOND: That the Master has failed to make any finding as to whether any damage alleged to be suffered by the complainant is either serious or irreparable.

[MASTER'S NOTE 31. See Master's Note 30.]

THIRD: That the Master has failed to make any finding as to whether the injury done to the respondent by an injunction would be disproportionate to the benefit derived by the complainant.

[MASTER'S NOTE 32. See Master's Note 30.]

FOURTH: That the Master has failed to make any finding as to the number of copies of the complainant's copyrighted book which remained in existence, or could be sold at the time of the alleged infringement, or at the time of the hearing.

[MASTER'S NOTE 33. Such finding would not be pertinent to any question involved in this reference. See Master's Notes 23, 28 and 30.]

FIFTH: That the Master has failed to make any finding as to the good faith of the respondent corporation or its officers.

[MASTER'S NOTE 34. The defendant corporation must be judged by what it has done through its officers, agents and employés, which, so far

as the alleged infringement is concerned, is shown by Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15 and 15A. I have not intended, and do not now intend, in this report, to pass upon the good faith of any one. It is not necessary to do so upon this reference.]

By its Solicitors,

GASTON, SNOW & SALTONSTALL.

COMPLAINANT'S ACTION ON MASTER'S DRAFT REPORT.

[FILED WITH THE MASTER SEPTEMBER 15, 1904.]

1. It is submitted that on page 1, in third line of the paragraph beginning "Front Checks", the word "their" should be changed to "its".

[MASTER'S NOTE 35. I adopt Mr. Browne's suggestion, and have changed my report accordingly.]

2. That on page 2, about the middle of the page, the words "mutually agreed upon" should be substituted for the words "furnished by Mr. Browne".

[MASTER'S NOTE 36. The record reads: "It is agreed that the evidence in this case may be taken stenographically." I understood that the stenographers were furnished by Mr. Browne, but as to this I may be in error. There may have been an agreement of which I was not advised.]

3. It is submitted that on page 4, in the paragraph headed "Master's Finding 7", the words "it is impossible that" should be inserted before the words "an actual verification" in the seventh line of said paragraph, and that the word "made" should be substituted for the word "impossible" in the eighth line thereof.

[MASTER'S NOTE 37. My statement as it stands, means substantially the same as it would if amended as suggested by Mr. Browne.]

On page 5, line 6, the word "eleven" should be substituted for the words "the first seven".

[MASTER'S NOTE 38. On re-examination of my draft report, I discover that seven (*but not the first seven*) of the persons represented by the names on Master's Schedule B, moved from the residences or places of business given in both directories before the defendant commenced its original canvass, namely: (1) Charles B. Gilman, (2) Caribel Gilman, (4) Grace M. Gilman, (8) Ada Wells Gilman, (11) Edgar F. Gilpatric, (12) Samuel S. Gilpatrick and (13) Mrs. T. B. Gilpatrick. I accordingly amend Master's Finding 8, page 5, line 6, by striking out the words "the first", and I confirm said finding as so amended. My error arose from re-arranging the names alphabetically after I had drafted the finding.]

4. At the end of the paragraph headed "Master's Finding 9", the following should be inserted: "In the complainant's General Directory, containing 1725 pages, there would be found 2587 such transfers in all, if the same proportion holds throughout".

[MASTER'S NOTE 39. What Mr. Browne suggests should be inserted at the end of Master's Finding 9 as an obvious inference from the last paragraph of that finding. It is not necessary for me to amend this finding.]

5. In the paragraph beginning "Master's Finding 10", in the seventh line thereof, after "but" insert "it is impossible that". In the eighth line of said paragraph substitute "made" for "impossible".

[MASTER'S NOTE 40. My statement as it stands means substantially the same as it would if amended as suggested by Mr. Browne.]

6. It is submitted that in "Master's Finding 11" there should be added to the thirty-five instances of double insertion contained in "Schedule E", the following instances, and that the other findings under this head should be corrected numerically accordingly:

(1) Allen, Robert C., should be Allan, page 18.

(2) Anderson, Charles A., should be William C., page 59.

(3) Benthall, Fred J., should be Bentholl, page 23.

(4) Coburn, William M., 133 Harvard av., should be William B., 13 Harvard av., page 43.

(5) Demers, Joseph, should be James, page 43.

(6) Eastman, Charles, should be Charles E., page 19.

(7) Hale, George A., should be George E., page 19.

(8) Hirschman, Harry, should be Hirshman, page 20.

(9) Lightford, Harry L., should be Lightfoot, Harry W., page 20.

(10) McGibbon, John J., should be John D., page 64.

(11) Rigby, James J., 54 Dorchester, should be 54 Newport, page 45.

(12) Ross, William R., should be Jordan, William Roscoe, page 21.

(13) Saunders, Edward L., 8 Joy, should be Edmund S., 10 Joy, page 21.

(14) Sheerin, Thomas, Rev., should be John, Rev., page 45.

(15) Stevenson, Francis, 564 Washington, should be Frederick, page 45.

[MASTER'S NOTE 41. In making Master's Schedule E, I examined each of the instances specified by Mr. Browne, except No. 8, and decided not to include them in that schedule I have re-examined these instances and am satisfied that my decision was correct.

No. 8 might have been included in Master's Schedule E, as follows:

(36)

C. D. (23) 883. Hirschman Harry, trimmer, 18 Summer, bds. 124 Union park

D. D. 800. Hirschman Harry, trimmer, 18 Summer, res. 124 Union pk.

" 800. Hirshman Harry, clothing trimmer, 18 Summer, res. 124 Union pk. st.

I now add this instance to Master's Schedule E, and amend Master's Finding 11 by substituting "thirty-six (36)" for "thirty-five (35)" in two places on page 6.]

7. In the paragraph headed "Master's Finding 13", in the seventh line thereof, after the word "av." insert the following sentence: "These were also traps intentionally set, and the defendant fell into them also."

[MASTER'S NOTE 42. This sentence is easily read into Master's Finding 13 as it stands. It is not necessary to amend the finding.]

8. On page 8, before "Master's Finding 15", insert a new paragraph as follows:

"Master's Finding 14A. The defendant transferred to all parts of its Business Directory from the complainant's copyrighted directory many names and information connected therewith, which it did not obtain by its original canvass. As it is admitted, 'the defendant's Business Directory was checked up from original information in the same way as the General' (Hyde, page 265), but there was no blue-dotting. It has appeared that the number of names so transferred in check books 2 and 3, taken as samples of the whole, was about forty per cent of all the names appearing in the defendant's Business Directory."

[MASTER'S NOTE 43. I decline to incorporate the above into my report as Master's Finding 14A. The defendant introduced evidence tending to prove that it made a use of complainant's business directory similar to that which it claimed to have made of complainant's general directory, that is

to say, that it front-checked the names as to which it obtained information by its original canvass, and drew questions upon slips of paper on such names in small type as it did not front-check, and using these question slips went to original sources of information, verified the information contained on the question slips or corrected it where it should be corrected, and transferred to its directory the information so verified or corrected. This evidence is uncontradicted except as to two (2) specific instances, specified in Master's Finding 13, eight (8) specific instances specified in Master's Finding 15, and eight (8) specific instances specified in Master's Finding 15A, made upon consideration of Mr. Browne's suggestion which immediately follows this note.]

9. On page 10, before the paragraph beginning "Master's Finding 16", insert "Other cases of errors copied in the Business Directory are as follows:

(1) D. D., page 1612, Barbers, Alario, Joseph, testimony, page 75.

(2) D. D., page 1760, Real Estate, Beals & Newhall, testimony page 75.

(3) D. D., page 1649, Dress-makers, Burham, S. E., testimony page 75.

(4) D. D., 1776, Shoe-makers, Dugas, John, page 74.

(5) D. D., page 1778, Shoe Manufacturers, Farrior, Brown Shoe Company, page 76.

(6) D. D., page 1610, Bakers, Langerfeld, John P., page 78.

(7) D. D., page 1799, Teachers of Music, Moore, Grace T., page 78.

(8) D. D., page, 1623, Butter and Cheese, Mugford, B. E., page 74.

(9) D. D., page 1777, Shoe-makers, Petro, Frederick, page 74.

(10) D. D., page 1777, Shoe-makers, Riley, Patrick J., page 74.

(11) D. D., page 1760, Real Estate Brokers, Adams Real Estate Trust Company, page 18.

(12) D. D., page 1700, Lawyers, Chisholm, George C., page 19.

(13) D. D., page 1649, Dress-makers, Churchill, Mrs. M. H., page 19.

(14) D. D., page 1606, Artists, Enneking, John J., page 19.

(15) D. D., page 1721, Milliners, Gibbs, Carrie E., page 19.

(16) D. D., page 1787, Stock Brokers, Gile, Daniel D., page 43.

(17) D. D., page 1702, Lawyers, Hay, Robert T., page 19.

(18) D. D., page 1625, Carpenters, Henderson, W. T., page 43.

(19) D. D., page 1671, Grocers, Johnson, Adolph O., page 47.

(20) D. D., page 1672, Grocers, Laro V., page 20.

(21) D. D., page 1650, Dress-makers, Leach, Lile, page 44.

(22) D. D., page 1704, Lawyers, Morrell, George C., page 44.

(23) D. D., page 1797, Teachers of Music, Shedd, Heman, page 45.

(24) D. D., page 1601, Accountants, Watson, George, page 21.

(25) D. D., page 1610, Bakers, Westcott, Jennie, page 68.

In all the instances last above mentioned, the defendant's General Directory either fails to show the name at all, or shows it with different information. In every case the information furnished in the defendant's Business Directory is an error copied from the complainant's Business.

[MASTER'S NOTE 44. I have now examined the above instances which were not called to my attention specifically in complainant's brief nor at the argument before me, and in view thereof make the following finding:

MASTER'S FINDING 15A. Other cases of errors copied into the defendant's Business Directory, making a part of its 1904 City Directory of Boston, from complainant's copyrighted directory are as follows:

(9) Mr. BROWNE'S (10)

Business heading, BOOT AND SHOE MAKERS in complainant's and SHOEMAKERS in defendant's directory.

C. D.	(2)	1967.	Riley Patrick J. 145 Albany
D. D.		1777.	Riley Patrick J. 145 Albany
"		1386.	Riley Patrick J. Boots and shoes, 7 Oak, res 93 do.

(10) Mr. BROWNE'S (12)

Business heading in both directories, LAWYERS.

C. D.	(8)	2078.	Chisholm George C. 15 Court sq. rm. 2
D. D.		1700.	Chisholm George C. 15 Court sq. r. 2
"		443.	Chisholm George C. real estate, 15 Court Sq. rm. 2 res. at Sharon.

(11) Mr. BROWNE'S (15)

Business heading in both directories, MILLINERS.

C. D.	(9)	2103.	Gibbs Carrie E. 110 Hotel Pelham
D. D.		1721.	Gibbs Carrie E. 110 Hotel Pelham
"		43*.	Gibbs Carrie A. Mrs. millinery, 110 Hotel Pelham, res. do.

(12) Mr. Browne's (17)
Business heading in both directories, Lawyers.

C. D. (8) 2080. Hay Robert T. 53 State, rm. 712
D. D. 1702. Hay Robert T. 53 State, rm. 712
" 766. Hay Robert T. (Carret, Chase & Hay) lawyer, 53 State, rm. 713, res. 2 Quincy pl. Rox.

(13) Mr. Browne's (18)
Business heading in both directories, Carpenters and Builders.

C. D. (3) 1983. Henderson W. T. 35 Crescent ave. Dor.
D. D. 1625. Henderson W. T. 35 Crescent ave. Dor.
" 780. Henderson William T. carpenter, res. 53 Crescent ave. Dor.

(14) Mr. Browne's (19)
Business heading in both directories, Grocers.

C. D. (6) 2046. Johnson Adolph O. 498 Sumner E. B.
D. D. 1671. Johnson Adolph O. 498 Sumner E. B.
" 862. Johnson Adolph O. dry goods 322 Sumner, E. B. and grocer, 187 do. res. 498 do.

(15) Mr. Browne's (20)
Business heading in both directories, Grocers.

C. D. (6) 2046. Laro V. 469 Hanover
D. D. 1672. Laro V. 469 Hanover
" 928. Lauro Vincenzo, grocer, 469 Hanover, res. do.

(16) Mr. Browne's (25)
Business heading in both directories, Bakers.

C. D. (1) 1956. Westcott Jennie 85 Orleans
D. D. 1610. Westcott Jennie 85 Orleans
C. D. 1870. Westcott Jennie, baker, 95 Orleans, E. B. h. 222 Everett, do.

I decline to make a similar finding as to Mr. Brown's instances 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 16, 21, 22, 23, and 24, preferring not to find copying where there is not corroborative proof thereof from an inspection of defendant's directory except in the single instance of Westcott Jennie as to which the evidence of complainant's witness, Alexander Hutchins, (typewritten page 68) is plenary.

COMPLAINANT'S REQUESTS FOR RULINGS.

Upon the findings of fact made by the Master, it is requested that he should find as conclusions of law instead of the findings made by him, as follows:

First. From the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied nu-

merous names of persons occurring in the complainant's directory, but deceased or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant, from using, selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

NOTE. This conclusion is based upon the assumption that whereas the defendant's witnesses have testified that in every case where information was not obtained by original canvass, it was obtained by verification of matter copied from complainant's book, yet it appearing that in these isolated and widely separated instances such was not the fact, there is ground for finding that in no case was the matter copied from complainant's book verified, but that all matter so copied was printed as copied, without verification. If this be found, the matter so printed forming a large portion of the defendant's entire book, and not being readily distinguishable from the rest, the defendant having wrongfully mixed the matter of another with his own, must suffer the consequences.

[MASTER'S NOTE 45. I decline to report a conclusion of law in the form above suggested by Mr. Browne. I have found as facts substantially that the defendant copied into its directory from complainant's copyrighted directory the three trap names mentioned in Master's Findings 12 and 13, and has so copied the errors specified in Master's Findings 7, 8, 10, 11, 14, 15, and 15A, and the errors referred to in Master's Finding 9. I amend my first conclusion of law on page 12 by substituting for the words, "Master's Finding 15", at the end of paragraph (1), the words, "Master's Findings 15 and 15A", and, as thus amended, I confirm my said first conclusion of law.]

SECOND. If the complainant is not entitled to an injunction as aforesaid, then that it is entitled to an injunction against the defendant from using or selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of its 1904 City Directory of Boston so long as it contains the matter set forth in paragraphs 1, 2, 3 and 4, on page 12 of the Master's Report.

[MASTER'S NOTE 46. Yes; that was the intent of my first conclusion of law on page 12, and I assent that the words, "or otherwise disposing of, or offering to dispose of", may be inserted in the second line of my said first conclusion of law, after the words, "or offering for sale".]

THIRD. If the first conclusion of law above set forth is correct, the complainant is entitled to a decree for an accounting of profits derived by defendant from and by reason of its manufacture, use, sale, or delivery of its 1904 City Directory of Boston.

[MASTER'S NOTE 47. Yes; but in Master's Note 45 I have declined to report a conclusion of law in the form set out in Mr. Browne's above paragraph FIRST.]

FOURTH. If the second conclusion of law above set forth is sustained, the complainant is entitled to a decree as set forth in the clause marked "SECOND" at the end of the Master's present findings.

[MASTER'S NOTE 48. Yes; the complainant is entitled to such a decree.]

Respectfully submitted,

ALEX. P. BROWNE,

Solicitor and of Counsel for Complainant.

Respectfully submitted,

JOHN G. STETSON, *Master.*

SEPTEMBER 30, 1904. The foregoing was submitted to counsel for both parties, Mr. Browne and Mr. Hunt, as a second draft report to be retained in the master's office till Wednesday, October 5, 1904.

OCTOBER 3, 1904. Mr. Hunt sent to me a letter from which I quote the following:

I think that, to protect fully the rights of my clients, I must ask you to report all the evidence in Sampson & Murdock Co. *v.* Seaver-Radford Co.

Upon this request by Mr. Hunt in behalf of the defendant I report all the evidence before me as required by the order of reference of May 17, 1904, and I annex a schedule of this evidence to this report.

OCTOBER 15, 1904. No further objections being taken by either party and no further requests being made by either party, I make this my final report.

Respectfully submitted,

JOHN G. STETSON, *Master.*

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the above report the complainant filed the following exceptions:

1. It excepts to the ruling of the Master in "Master's Note 25" that a compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to the persons upon whom it may be worth his while to call.

2. It excepts to the ruling of the Master in "Master's Note 26", that "One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct."

3. It excepts to the ruling of the Master in "Master's Note 27" that "the right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows they should be changed, to correspond with the facts, and checking them as correct when they prove to be correct."

4. It excepts to the failure of the Master to find as a conclusion of law (See Master's Note 45) that from the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied numerous names of persons occurring in the complainant's directory, but deceased, or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant from using, selling or offering

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for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

The defendant also filed certain exceptions, but, upon hearing, argued only, first, an exception in reference to the right to drawing questions, and second, an exception urging that the master ought to have made a finding that the plaintiff should affirmatively show damages before he is entitled to any injunction. Defendant's other exceptions were not pressed at the hearing, and need not be referred to.

(After stating the case). This cause has already been before the Court upon the question of preliminary injunction, 129 Fed. 761. After action had been taken on that question, the case came before us upon bill, answer and replication, and, under the practice of the Court in such cases, was referred to John G. Stetson, as master, to hear the evidence, find the facts, and report to the court his findings of fact, his conclusions of law and such portions of the evidence as either party might request, or as he might deem useful for the court. The master has fully heard the parties and has filed his report, which clearly presents the whole matter for our consideration. The leading and vital contention of the complainant is that the master made an error in ruling that "one who is compiling a general directory of a city has the right to make his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory and then to print and publish the result as his own, abandoning what is not found and changing what his investigation shows should be changed, and printing, without change, what he has, by means of his own investigation, found to be correct." In our former decision we found it necessary to refer to this subject, and to dis-

cuss it briefly. We stated the leading English authorities and the cases presenting the conclusions of the Federal courts of this country; we referred to the late cases: The Thompson Co. v. American Law Book Co., 122 Fed. 922, and Dun v. International Mercantile Agency, 127 Fed. 173. We then said: "It seems to us that there is strong reason for holding that the publisher of a new directory has a right to take an old directory, and be guided by it to original sources of information, and that if, so guided, he goes to those sources of information and obtains facts, he may publish those facts, even though they consist of names and addresses which are identical with those published by the old directory. But upon this motion for a temporary injunction it is not necessary nor fitting for the court to pass upon this question."

As the case now comes before the court it is necessary to pass upon the question. We see no reason for coming to a different conclusion from that suggested in our former opinion. The American cases which we have just cited, contain the latest expression of the Federal Courts upon the subject, and must control our action. The learned counsel for the complainant has presented a very able argument, insisting that the court should not allow the compiler of a directory to verify his own work by a former directory; that he should not be permitted to go to the original sources pointed out by the former directory and, after verifying the statement of the former directory, then to publish the names and addresses, if they are identical with those published in a former directory. But the action which we indicated in our former opinion amounts to something more than mere verification. For example, let us suppose that in July a publisher is obtaining information upon which he proposes to publish a directory. He takes an old directory which had been compiled the preceding January; in that directory it appears that John Smith was in January a lawyer at No.1 Tremont Street. With the information contained in the January directory, the compiler of the

July directory goes to No.1 Tremont Street on July first, and finds that John Smith is a lawyer, that he has at that date an office at No.1 Tremont Street. The directory maker has a right to publish this information in his July directory;he cannot be precluded from so publishing it by the fact that the maker of the January directory has stated that the same facts existed in the preceding January. The maker of the January directory may or may not have stated the truth as to John Smith at that time; but the compiler of the July directory may, in his directory, state the facts as they exist on July first relating to John Smith, whether those same facts existed or not the previous January, and whether they were stated or not in the January directory. The compiler of the July directory is not merely verifying and quoting; he is obtaining facts from original sources,using the old directory only to guide him to these sources. Facts so obtained he may publish in his compilation;he cannot be prevented from such publication by the fact that the same things were true in January, and were stated by a former compiler.

In reference to the exceptions raised by the defendant, we have already considered the subject of the first exception in our opinion; in reference to the second exception,we sustain the findings of the master.

We overrule the exceptionsof both parties to the report of the master and confirm his findings of fact and conclusions of law.

The learned counsel for complainant requests that the court decree a general injunction with liberty for the defendant to have the injunction removed when he shall have expunged certain offending matter; he bases this request upon the decree in Social Register Association v. Murphy, 128 Fed.116; but in that case the court found that as to portions of the book at issue certain material of the complainant and defendant were so blended that a separation was impractical, and on this ground made the injunction general. We prefer to order a specific injunction in accordance with the details indicated in the findings of the

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master.

A decree may therefore be entered that there be:

First: An injunction against the defendant from using or selling or offering for sale any copy of its 1904 City Directory of Boston so long as it contains

(1) in its list of Office Buildings, Halls, etc., on page 173, the name and location McKinley Hall, 24 W.Concord St.,

(2) in it general directory the names and information connected therewith set out in Master's Findings 7, 8, 9, 10, 11 and 14.

(3) in its general directory the names and the information referred to in Master's Findings as not front-checked in the check books and so not obtained by original canvass, and not blue-dotted and so not obtained from original sources upon questions drawn, but which are not included in Master's Schedule C, and

(4) in its business directory the fictitious names and locat ions,Rogers,Robert L.,312 Maverick, on page 1969, and Jones,G.W.,1650 Dorchester Av., on page 2151, and the sixteen (16) names and information in the form described in Master's Findings 15 and 15 A.

Second: That there be an accounting to the complainant for profits derived by the defendant from, and by reasonof, its incorporating in its 1904 City Directory of Boston the names and information specified above in paragraphs (1),(2), (3) and (4), and from the manufacture and sale of said directory in so far as such profits are attributable to such incorporating therein of said names and information.

CLAIM OF APPEAL AND ASSIGNMENT OF ERRORS.
[Filed Feb. 27, 1905.]

And now comes the complainant and claims an appeal in this suit and assigns therefor the following errors, viz.,

First: That the Court erred in sustaining the following ruling of the Master herein:

"A compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call."

Second: That the Court erred in sustaining the following ruling of the Master:

"One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has by means of his own investigation found to be correct".

Third: The Court erred in sustaining the following ruling of the Master:

"The right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows that they should be changed to correspond with the facts and checking them as correct when they prove to be correct".

Fourth. That the Court erred in sustaining the following ruling of the Master:

"From the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the com-

plainant's directpry, and has copied numerous names of persons occurring in the complainant's directory, but deceased or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant, from using, selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

Note. This conclusion is based upon the assumption that whereas the defendant's witnesses have testified that in every case where information was not obtained by original canvass, it was obtained by verification of matter copied from complainant's book, yet it appearing that in these isolated and widely separated instances such was not the fact, there is ground for finding that in no case was the matter copied from complainant's book verified, but that all matter so copied was printed as copied, without verification. If this be found, the matter so printed forming a large portion of the defendant's entire book, and not being readily distinguishable from the rest, the defendant having wrongfully mixed the matter of another with his own, must suffer the consequences.

(Master's Note 45. I decline to report a conclusion of law in the form above suggested by Mr.Browne. I have found as facts substantially that the defendant copied into his directory from complainant's copyrighted directory the three trap names mentioned in Master's Findings 12 and 13, and has so copied the errors specified in Master's Findings 7,8,10,11,14,15, and 15 A, and the errors referred to in Master's Finding 9. I amend my first conclusion of law on page 12 by substituting for the words,'Master's Finding 15', at the end of paragraph (4), the words 'Master's Findings 15 and 15 A', and, as thus amended, I confirm my said first conclusions of law.)"

Fifth. That the Court erred in confirming the following ruling of the Master:

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"The complainant is entitled to an injunction against the defendant from using or selling or offering for sale any copy of its 1904 City Directory of Boston so long as it contains

(1) In its list of Office Buildings, Halls, etc., on page 173, the name and location McKinley Hall, 24 West Concord St.,

(2) In its general directory the names and information connected therewith set out in Master's Findings 7,8,9,10,11 and 14.

(3) In its general directory the names and the information referred to in Master's Finding 9 (as not front-checked in the check-books and so not obtained by original canvass, and not blue-dotted and so not obtained from original sources upon questions drawn, but which are not included in Master's Schedule C, and

(4) In its business directory the fictitious names and locations, Rogers, Robert L., 312 Maverick, on page 1969, and Jones, G.W., 1650 Dorchester Av., on page 2151, and the sixteen (16) names and information in the form described in Master's Findings 15 and 15 A."

Sixth: That the Court erred in refusing to grant a general injunction against the defendant with opportunity to the defendant to apply for a modification thereof when all matters copied from the complainant's work shall have been expunged from the defendant's work.

Seventh: That the Court erred in finding that the compiler of a general directory of a city has a right to copy a part of the names and addresses contained in another copyrighted general directory, and to use the names so copied in the preparation of such other directory.

SAMPSON & MURDOCK COMPANY,
by Alex.P.Browne,
Solicitor and
of Counsel.

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~~UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.~~

~~CITATION ON APPEAL.~~

UNITED STATES OF AMERICA, SS.:

The President of the United States,

To the Seaver-Radford Company, a corporation organized under the general laws of the State of Massachusetts, and having its usual place of business at Boston in said State and District,

GREETING:

You are hereby cited and admonished to be and appear in the **United States Circuit Court of Appeals for the First Circuit,** in the city of Boston, Massachusetts, on the* twenty fifth day of March next, pursuant to an Appeal duly obtained from a decree of the† Circuit Court of the United States for the District of Massachusetts, wherein the Sampson & Murdock Company, a corporation organized under the general laws of the State of Rhode Island,

is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable CLARENCE HALE, Judge of the District Court of the United States assigned to hold said Circuit Court, for the District of Maine, duly this 27th day of February, in the year of our Lord one thousand nine hundred and five.

Clarence Hale

U.S. District Judge.

* Not exceeding 30 days from the day of signing.
† Name of Court in which the Decree is entered.

(over)

ACKNOWLEDGMENT OF SERVICE ON CITATION. ~~OR APPEAL.~~ March 21-1905 114 T-8

Service of the within citation on the within named Strauss-Rudford Company is hereby acknowledged and accepted.

Hurlin, Swan & Saltmarsh
Atty for Strauss-Rudford Company.

Mule
(close up)

~~UNITED STATES OF AMERICA,~~

District of ..... ss.

I hereby certify that on the ..... day of ..... 190 .

I served the within ..... citation by .....

.....

.....

.....

.....

~~United States Marshal.~~

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

I, ALEXANDER H. TROWBRIDGE, Clerk of the Circuit Court of the United States for the District of Massachusetts, within the First Circuit, certify that the foregoing is a true copy of the record in the cause in equity, entitled,

No. 1937,

SAMPSON & MURDOCK COMPANY,
Complainant,

v.

SEAVER-RADFORD COMPANY,
Defendant,

in said Circuit Court determined, the Opinion of the Circuit Court of February 2, 1905, the Prayer for Appeal and Assignment of Errors and also the original Citation issued upon the appeal of the complainant in said cause, with the Acknowledgment of Service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at Boston, in said District, this twenty fifth day of March, A.D. 1905.

Alex. H. Trowbridge
Clerk.

[Seal]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1904.

No. 583.

SAMPSON & MURDOCK COMPANY,

COMPLAINANT, APPELLANT,

v.

SEAVER-RADFORD COMPANY,

DEFENDANT, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, FROM FINAL DECREE (HALE, J.), FEBRUARY 20, 1905.

TRANSCRIPT OF RECORD.

ALEXANDER P. BROWNE,
for Appellant.

THOMAS HUNT,
GASTON, SNOW & SALTONSTALL,
for Appellee.

BOSTON:
PRINTED UNDER DIRECTION OF THE CLERK.
1905.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1904.

No. 583.

SAMPSON & MURDOCK COMPANY,

COMPLAINANT, APPELLANT,

v.

SEAVER-RADFORD COMPANY,

DEFENDANT, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, FROM FINAL DECREE (HALE, J.), FEBRUARY 20, 1905.

TRANSCRIPT OF RECORD.

ALEXANDER P. BROWNE,
for Appellant.
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BOSTON:
PRINTED UNDER DIRECTION OF THE CLERK.
1905.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1904.

No. 583.

SAMPSON & MURDOCK COMPANY,
COMPLAINANT, APPELLANT,

v.

SEAVER-RADFORD COMPANY,
DEFENDANT, APPELLEE.

TRANSCRIPT OF RECORD OF CIRCUIT COURT.

[FILED IN CIRCUIT COURT OF APPEALS MARCH 25, 1905.]

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS.

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday of October, being the eighteenth day of October, in the year of our Lord one thousand nine hundred and four.

Before

THE HONORABLE FRANCIS C. LOWELL, *District Judge.*

No. 1937, EQUITY.

SAMPSON & MURDOCK COMPANY, COMPLAINANT,

v.

SEAVER-RADFORD COMPANY, DEFENDANT.

The Bill of Complaint in this cause was filed in the clerk's office on the twenty-third day of February, A. D. 1904, and was duly entered at the February Term of this Court, A. D. 1904, and is in the words and figures following: —

BILL OF COMPLAINT.

[FILED FEBRUARY 23, 1904.]

To the Honorable the Judges of the Circuit Court of the United States for the First Circuit in the District of Massachusetts:

Sampson & Murdock Company, a corporation organized under the general laws of the State of Rhode Island, brings this bill of complaint against Seaver-Radford Company, a corporation organized under the general laws of the State of Massachusetts, and having its usual place of business at Boston, in said State and District.

Thereupon your orator complains and says :

1. That on or before the twenty-ninth day of June, 1903, and prior to the date of publication thereof in this or any foreign country, the firm of Sampson, Murdock & Company, of Boston, the predecessors in business of your orator, deposited in the mails within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of a certain book entitled "The Boston Directory", containing the city record, a directory of the citizens' business directory and street directory, with map No. XCIX for the year commencing July 1, 1903, in order to copyright the same, and claimed said copyright as authors and proprietors; and that they deposited in like manner the sum of fifty cents for copyright fees, and that thereupon, on the eleventh day of July, 1903, and also before the day of publication in this or any foreign country, deposited in the mails within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two printed copies of such copyright directory; and that the said title so deposited was duly recorded by the Librarian of Congress upon the said twenty-ninth day of June, 1903, whereby they became entitled to the copyright upon said book under the laws of the United States.

2. That on the first day of October, 1903, the said firm of

Sampson, Murdock & Company for a valuable consideration and by an instrument in writing, a copy of which is hereto annexed, conveyed the said copyright to the complainant herein, and that the complainant by the said conveyance became and has ever since been, and now is, the sole owner of said copyright and of the exclusive rights thereby conferred under the laws of the United States.

3. That the two copies of the said book deposited as above set forth were printed from type set within the limits of the United States, or from plates made therefrom.

4. That the said Sampson, Murdock & Company and the complainant as their assignee and successor in the business, have given notice of the said copyright by inserting in the several copies of every edition published, on the title page thereof, the copyright notice required by law, in the following words, to wit: "Copyright 1903, by Sampson, Murdock & Co."

5. That the defendant corporation after the recording of the title of the said book and the depositing of two copies thereof as provided by the laws of the United States, and within the term of copyright limited, and without the consent of the proprietors of the said copyright in writing or otherwise, has printed and is about to publish and sell or expose for sale, many copies of a certain book entitled "The 1904 City Directory of Boston", each of which said copies is in whole or in part a copy of the directory compiled and copyrighted by the said Sampson, Murdock & Company.

6. That such copying and threatening to publish and sell the same is in violation of the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the book duly copyrighted to the said Sampson, Murdock & Company, the copyright of which has been assigned by them and is now held by your orator as aforesaid.

Wherefore your orator prays:

1. That the said defendant, the Seaver-Radford Company, may be compelled by a decree of this Court to account for and pay over to your orator the damages that your orator has sus-

tained by the said unlawful acts of the said defendant, and that the said defendant, the Seaver-Rradford Company, its officers, attorneys, agents and servants may be enjoined and restrained by the decree and injunction of this Court from completing, publishing, selling or offering for sale its said directory, and that it may be in like manner enjoined and restrained during the pendency of this suit, and that your orator may have such other and further relief as the equity of the case may require.

And to this end your orator prays your Honors to grant unto it not only writs of injunction conformable to the prayers of this bill, but also a writ of subpœna issuing out of and under the seal of this Honorable Court, directed to the defendant, the said Seaver-Radford Company, commanding it to appear and answer to and abide by such order and decree hereafter as to this Court may seem required by the principles of equity and good conscience.

SAMPSON & MURDOCK COMPANY,
by WM. E. MURDOCK, *Pres.*

UNITED STATES OF AMERICA,
STATE AND DISTRICT OF MASSACHUSETTS,
COUNTY OF SUFFOLK, SS.

Personally appeared before me, at Boston, this twenty-third day of February, 1903, William E. Murdock, and made oath that he is the president of the complainant corporation; that he has read the foregoing bill of complaint and understands the contents thereof, and that the same is true.

[SEAL] BENJ. H. BRADLEE, *Notary Public.*

COPY OF BILL OF SALE.

Know all men by these presents, That we, William E. Murdock, Charles D' W. Marcy and George R. Murdock, all of the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, as partners doing business under the name of Sampson, Murdock & Company, in consideration of four hundred thousand dollars ($400,000) paid by the Sampson & Murdock Company, a corporation organized under the General Laws of the State of Rhode Island, the receipt whereof is

hereby acknowledged, do hereby bargain, sell and deliver unto the said Sampson & Murdock Company the following goods and chattels, viz. :

All map plates, cuts, printing material, books, copyrights, contracts, office furniture and other personal property of every description, including forty thousand dollars ($40,000) in cash, but not including the receipts for goods already sold or bills and accounts receivable or cash in excess of forty thousand dollars ($40,000), wherever situated, belonging to the said firm of Sampson, Murdock & Company and used by them in connection with their business as publishers and copyright owners of the New England Business Directory and Gazetteer, Boston Business Directory, Rhode Island State Register and Directory, Providence House Directory, Providence Register and Business Directory, and directories for the following named cities and towns: Providence, Pawtucket, Central Falls, Newport, Woonsocket, Westerly, East Providence, Bristol, Warren, Barrington and Pawtuxet Valley in Rhode Island; Albany, Rensselaer, Troy, Watervliet, Cohoes, Waterford, Syracuse and Oswego in New York; Manchester in New Hampshire; Amesbury, Attleboro, Billerica, Boston, Chelmsford, Dracut, Essex, Fall River, Gloucester, Lawrence, Lowell, Lynn, Malden, Manchester, Newburyport, Rockport, Taunton, Tewksbury, Tyngsboro and Westford in the Commonwealth of Massachusetts, together with the good will of said business carried on by said Sampson, Murdock & Company.

Said personal property hereby transferred being more particularly shown in a schedule thereof hereto annexed and marked "Exhibit A".

To Have and to Hold, all and singular the said goods and chattels to the said Sampson & Murdock Company, its successors and assigns, to its own use and behoof forever.

And we hereby covenant with the grantees that we are the lawful owners of the said goods and chattels; that they are free from all encumbrances; that we have good right to sell the same as aforesaid; and that we will warrant and defend the same against the lawful claims and demands of all persons.

In witness whereof, we, the said William E. Murdock, Charles D'W. Marcy and George R. Murdock as co-partners as aforesaid, have hereunto set our hands and seals, this first day of October, in the year one thousand nine hundred and three.

WILLIAM E. MURDOCK.
CHARLES D'W. MARCY.
GEORGE R. MURDOCK.

Signed, sealed and delivered in presence of

J. FRANK HILLIKER.

A true copy:

Attest: GEORGE R. MURDOCK, *Secretary.*

At the same term the following Answer was filed : —

DEFENDANT'S ANSWER.

[FILED MAY 2, 1904.]

And now comes the respondent in the above-entitled cause, and for answer to the complainant's bill says as follows :

FIRST : The respondent is ignorant as to the truth of the facts alleged in those paragraphs of the complainant's bill which are numbered one, two, three and four, so that it can neither admit nor deny the same, but leaves the complainant to prove them so far as they may be material.

S D: Each and every allegation contained in that paragraph of the complainant's bill numbered five the respondent specifically denies.

THIRD : The respondent is advised and believes that that paragraph of the complainant's bill numbered six does not contain any allegation of fact, but only states a conclusion of law, and the accuracy and correctness of that conclusion of law the respondent denies.

FOURTH : The respondent, further answering, says that it has compiled a book entitled "1904 City Directory of Boston", which had neither been printed nor published at the time of the filing of the bill in this cause on February 23, 1904, but was published long after that time, that is to say, on or about April 28, 1904:

That said book differs from "The Boston Directory" in name, shape, size, typography, style of binding and in arrangement, and cannot be confused with or mistaken for it:

That the respondent's said book has been compiled by it by means of original investigation and research, with much labor,

and by employing large numbers of persons, and at an expense of some forty thousand dollars ($40,000).

FIFTH: And the respondent, further answering, says that in the compilation and preparation of its said book it has made no use of the complainant's book except such as it was advised and believed, and still believes, is entirely lawful, having used it only for the purpose of directing itself to persons whose names are given in it, and of finding out persons upon whom it was desirable to call, and that even such use as was made in this way was limited to a small proportion of the names contained in either book.

SIXTH: The respondent, further answering, specifically denies that any copyright of the complainant has been infringed by it.

SEVENTH: The respondent, further answering, specifically denies that the complainant has suffered, or will suffer, any damage by reason of any infringement by the respondent, and alleges that any injury or loss which it may suffer, if any, will be due solely to fair and lawful competition, or to the fact that the respondent has produced and published a directory later in date and superior in all respects to that of the complainant, and will not constitute a legal damage.

EIGHTH: The respondent, further answering, says that the complainant's book was of temporary and ephemeral value only, and had been on the market for more than nine months before the publication of the respondent's book, — that is to say, since July 13, 1903; that at the time of the publication of the respondent's book, April 28, 1904, substantially the entire edition of the complainant's book had been sold, there were few, if any, copies thereof remaining available for sale, and there was no sale for such as did remain, if any, which were therefore of no value.

By its Solicitors,

GASTON, SNOW & SALTONSTALL.
THOMAS HUNT.

Also at the same term the following Replication was filed:—

REPLICATION.

[Filed May 17, 1904.]

The replication of Sampson & Murdock Company, complainant, to the answer of Seaver-Radford Company, defendant.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says, that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain and prove; and humbly prays as in and by its said bill it has already prayed.

By its Solicitor,
ALEX. P. BROWNE.

Also at the same term the following Order of Reference to a Master was entered, the Honorable Clarence Hale, District Judge for the District of Maine, duly assigned to hold said Circuit Court, sitting:—

ORDER OF REFERENCE TO A MASTER.

May 17, 1904.

Hale, J. The cause is referred to John G. Stetson, Esq., Master, upon the bill, answer and replication, to hear the evidence, find the facts and report to the Court his findings of fact, his conclusions of law and such portions of the evidence as either party may request.

By the Court,
L. C. TUCKER,
Deputy Clerk.

Also at the same term the following Master's Report was filed:—

Circuit Court of the United States,

DISTRICT OF MASSACHUSETTS.

No. 1937, Equity.

SAMPSON & MURDOCK COMPANY,
COMPLAINANT,

v.

SEAVER-RADFORD COMPANY,
DEFENDANT.

MASTER'S REPORT.

[FILED IN CIRCUIT COURT OCTOBER 15, 1904.]

To the Honorable the Judges of the Circuit Court:

I submit the following statement of abbreviations and definitions of terms used in this report and in the schedules thereto annexed:

ABBREVIATIONS AND DEFINITIONS.

C. D. Complainant's Directory,— the complainant's copyrighted Boston Directory, 1903, — alleged to be infringed.

D. D. Defendant's Directory, — the defendant's 1904 City Directory of Boston, — alleged to infringe.

Check Books. Sections or parts into which the defendant divided the complainant's general directory and its business directory for use in front-checking and drawing questions.

Front Checks. The black pencil marks which the defendant made in the check books to indicate that it had obtained information as to the names so front-checked by its original house-to-house canvass.

Blue Dots. The blue pencil dots which the defendant made in the check books to indicate that questions were to be drawn upon the names so blue-dotted.

Questions. The copies made of the names, etc., which the defendant had blue-dotted in the check books to be sent out for verification or otherwise.

C. D. (9) 414. This arrangement of letters and figures in the Master's schedules denotes, Complainant's Directory, the number of the check book and the page on which a given name, etc., is to be found.

D. D. 497. The number indicates the page in the defendant's directory where a given name, etc., is to be found.

On May 17, 1904, this cause was referred to me as master upon the bill, answer and replication, to hear the evidence, find the facts and report to the court my findings of fact, my conclusions of law and such portions of the evidence as either party may request.

Mr. Alexander P. Browne represents the complainant and Mr. Thomas Hunt represents the defendant in the proceedings before me.

I have heard the evidence offered by each party in the usual order. This evidence was taken stenographically by stenographers furnished by Mr. Browne, and copies of the evidence have been delivered to counsel for each party and to me. I have heard counsel for each party, and I now report my findings of fact and conclusions of law, and will report such portions of the evidence as either party may request.

FINDINGS OF FACT.

Master's Finding 1. The following allegations of the complainant's bill of complaint are true, namely:

1. That on or before the twenty-ninth day of June, 1903, and prior to the date of the publication thereof in this or any foreign country, the firm of Sampson, Murdock & Company, of Boston, the predecessors in business of your orator, deposited in the mails within the United States, addressed to the Librarian of Congress at Washington, District of Columbia, a printed copy of the title of a certain book entitled "The Boston Directory", containing the city record, a directory of the citizens' business directory and street directory, with map No. XCIX. for the year commencing July 1, 1903, in order to copyright the same, and claimed said copyright as authors and proprietors; and that they deposited in like manner the sum of fifty cents for copyright fees, and that thereupon, on the eleventh day of July, 1903, and also before the date of publication in this or any foreign country, deposited in the mails within the

United States, addressed to the Librarian of Congress at Washington, District of Columbia, two printed copies of such copyright directory; and that said title so deposited was duly recorded by the Librarian of Congress upon the said twenty-ninth day of June, 1903, whereby they became entitled to the copyright upon said book under the laws of the United States.

2. That on the first day of October, 1903, the said firm of Sampson, Murdock & Company, for a valuable consideration and by an instrument in writing, a copy of which is hereto annexed [that is, annexed to complainant's bill], conveyed the said copyright to the complainant herein, and that the complainant by the said conveyance became and has ever since been and now is the sole owner of said copyright and of the exclusive rights thereby conferred under the laws of the United States.

3. That the two copies of the said book deposited as above set forth were printed from type set within the limits of the United States, or from plates made therefrom.

4. That the said Sampson, Murdock & Company, and the complainant as their assignee and successor in the business, have given notice of said copyright by inserting in the several copies of every edition published on the title page thereof the copyright notice required by law, in the following words, to wit: "Copyright 1903, by Sampson, Murdock & Co."

MASTER'S FINDING 2. The copyright in suit and the complainant's title to the same are good and valid.

MASTER'S FINDING 3. The defendant company within the term of the complainant's copyright and without the consent of the owners thereof has printed, published, exposed for sale and sold many copies of a book entitled "The 1904 City Directory of Boston", referred to in this report as Defendant's Directory, the complainant's copyrighted directory being referred to as Complainant's Directory.

MASTER'S FINDING 4. The defendant's directory differs from the complainant's directory in shape, size, style of type, and arrangement, containing three columns on each page instead of two, and on these accounts is not liable to be mistaken for the complainant's directory. The complainant's directory is entitled "Boston Directory 1903", and the defendant's directory is entitled "1904 City Directory of Boston".

MASTER'S FINDING 5. In obtaining material for its directory the defendant, by its agents and employés, made an original and substantial house-to-house and office-to-office canvass of the city of Boston.

MASTER'S FINDING 6. After making its original canvass the defendant by its agents and employés divided a copy of the complainant's directory into sections called "check books" and front-checked, that is, checked in front of each name in black pencil upon the pages of these check books the names which it had obtained by its original canvass, except that it did not check all the names of barbers, hairdressers, laborers and persons having no business stated in complainant's copyrighted directory. Having thus front-checked names obtained by its original canvass, the defendant by its agents and employés blue-dotted in the check books such names as its agents and employés desired to draw questions upon, and having drawn such questions sought to verify the information substantially copied from the check book by going to original sources of information; but in many instances, particularly set forth in Master's Findings 7, 10, 11 and 12, the defendant by its agents and employés failing to make such verification transferred to its directory the information contained in the complainant's copyrighted directory.

MASTER'S FINDING 7. The defendant transferred to its directory from complainant's copyrighted directory the twenty-nine (29) names and the information connected therewith shown in Master's Schedule A, annexed to this report. These names are all blue-dotted in the check books into which complainant's copyrighted directory was divided, indicating that questions were drawn upon them, but an actual verification of such questions from original sources of information was impossible as the persons represented by these names died at various times from March 3 to July 18, 1903, and were dead at the times when the attempted verifications, if any, were made.

MASTER'S FINDING 8. The defendant transferred to starred pages 50 and 51 of its directory from pages 733 to 734 of com-

plainant's copyrighted directory the thirteen (13) names and the information connected therewith shown in Master's Schedule B. None of these names were obtained on the original canvass as none of them are front-checked, and questions were not drawn upon them as none of them are blue-dotted. The persons represented by seven of those names moved from the residences or places of business given in both directories before the defendant commenced its original canvass.

MASTER'S FINDING 9. The defendant transferred to all parts of its general directory from the complainant's copyrighted directory many names and information connected therewith which it did not obtain by its original canvass, as such names are not front-checked in the check books, and which it did not obtain by information from original sources on questions drawn upon such names and information connected therewith appearing in complainant's copyrighted directory as such names are not blue-dotted in the check books.

This finding is supported by a comparison of the names on many two consecutive pages selected at random from the check books, so called, with the same names as they appear in the defendant's directory. Master's Schedule C illustrates this as to pages 81–82, 181–182, 281–282, 381–382 and 481–482. On these ten pages are shown fifteen such transfers.

MASTER'S FINDING 10. The defendant transferred to its directory from complainant's copyrighted directory the forty-six (46) names and the information connected therewith shown in Master's Schedule D, annexed to this report. These names are all blue-dotted in the check books into which complainant's directory was divided, indicating that questions were drawn upon them, but an actual verification of said questions from original sources of information was impossible as the persons represented by these names moved from the places of business or from the residences shown in both directories, at various times previously to July 12, 1903, some of them one or two years previously, and all but three, (28) Horstmeier, (38) Owen and (42) Wallberg, previously to July 1, 1903, and all of them

had so removed previously to the times when the attempted verifications, if any, were made.

MASTER'S FINDING 11. In many instances the defendant has inserted in its general directory the names of persons and information connected therewith in two forms. In one form, it has copied the names and information connected therewith from the complainant's copyrighted directory; in the other form, the names and information connected therewith were obtained from some other source. Master's Schedule E contains thirty-six (36) such instances of double insertion of names and information connected therewith. As to each person included in this schedule, the first line shows the name and information (business address and residence) as they appear in complainant's copyrighted directory; the second line shows them as they appear in defendant's directory copied from complainant's copyrighted directory; and the third line shows them as they appear the second time in defendant's directory from information obtained from some other source. None of these names were front-checked in the check books, and all of them were blue-dotted, indicating that the defendant did not obtain them and the information connected therewith by its original canvass, and that questions were drawn upon them for verification. The complainant introduced evidence tending to show that there were errors in these names or in the information connected therewith as the names and information appeared in its copyrighted directory, which errors the defendant copied into its directory, and that these names and information connected therewith are correctly given by the defendant in the second form in which they appear in its directory. That the defendant obtained such information, namely, that appearing in the second form of its directory, from original sources and upon special inquiry, corroborates complainant's evidence as above stated; and I find as a fact that in the thirty-six (36) instances enumerated in Master's Schedule E there were errors in the names or information, or both, as they ap-

peared in the complainant's copyrighted directory, and that the defendant copied these errors into its directory.

MASTER'S FINDING 12. The complainant inserted in its list of Public Offices, Halls, Blocks, etc., in its copyrighted directory, on page 66, the fictitious name and location, McKinley Hall, 24 W. Concord. This was a trap intentionally set to catch copyists, and the defendant fell into it, transferring to its list of Office Buildings, Halls, Blocks, Theatres, and Public Buildings, on page 173 of its directory, this fictitious name and location, McKinley Hall, 24 W. Concord St.

MASTER'S FINDING 13. The complainant inserted in its Business Directory, making a part of its copyrighted directory, on page 1969, under the title of Boots and Shoes (Retail Dealers), the fictitious name and location, Rogers, Robert L. 312 Maverick, and on page 2151, under the title of Hairdressers, the fictitious name and location, Jones, G. W. 1650, Dorchester av. The defendant copied both these fictitious names and locations from complainant's copyrighted directory and inserted them in its Business Directory, making a part of its 1904 City Directory of Boston, Rogers, Robert L. 312 Maverick, E. B., on page 1774, under the title of Shoe Dealers, and Jones, G. W., 1650 Dorchester av. Dor., on page 1613, under the title of Barbers.

MASTER'S FINDING 14. The defendant copied the following name and residence into its general directory, making a part of its 1904 City Directory of Boston, from complainant's copyrighted directory.

C. D. (58) 179. Thomas Leo B. pastor Stoughton-st Baptist church, Dor. h. 31 Stoughton, do.
D. D. 1**. Thomas Leo B. pastor, Stoughton st Baptist church Dor res. 31 Stoughton, do.
C. D. (3) 1994. Thomas Leo B. (B), 31 Stoughton
D. D. 1633 (Business Directory, under the heading Clergymen). Thomas Leo B. (B.) 31 Sumner, Dor.

The correct residence is 31 Sumner, Dorchester.

This name is blue-dotted in check book 58 from complainant's general directory and is not front-checked in check book 3 from

complainant's business directory, both indicating that the defendant did not obtain this name and residence by its original canvass and that questions were drawn upon this name for verification from original sources of information. The defendant did obtain the correct residence, 31 Sumner, Dorchester, and inserted it in its business directory under the title, Clergymen, as shown by the fourth line above, but copied into its general directory the incorrect address, 31 Stoughton, Dorchester, as shown by the first and second lines.

MASTER'S FINDING 15. The defendant copied the following names and information into its Business Directory, making a part of its 1904 City Directory of Boston, from complainant's copyrighted directory.

(1)

Business heading in both directories, ARCHITECTS.

C. D. (1) 1949. Briscoe Maurice B. 120 Boylston
D. D. 1604. Briscoe Maurice B. 120 Boylston
D. D. 1604. Biscoe Maurice B. 110 Boylston

This name is blue-dotted in check book 1, Business, and the correct spelling of the name and the correct business location were obtained by defendant as shown in the third line above and entered, but the defendant copied into its directory the incorrect spelling and the incorrect location from complainant's copyrighted directory as shown in the first and second lines.

(2)

Business headings, BOOT & SHOE DEALERS in complainant's and SHOEMAKERS in defendant's directory.

C. D. (2) 1966. Masaree Arthur, 97 W. Concord
D. D. 1776. Masaree Arthur, 97 W. Concord
" 993 (General Directory). Macaree Arthur, cobbler, 99 W. Concord, res. 43 Langdon, Rox.

This name is not front-checked in check book 2, Business, indicating that it was not obtained on original canvass. The correct spelling of the name and the correct business location were obtained by defendant as shown by the third line above, but the defendant copied into its directory the incorrect spelling and the incorrect location from complainant's copyrighted directory as shown in the first and second lines.

(3)

Business heading in both directories, GROCERS.

C. D. (6) 2046. Kovitzky Simon, 12 Morton

D. D. 1672. Kovitzky Simon, 12 Morton

" 912s (General Directory). Koritzky Simon, crockery and coal agent, 12 Morton, res. do.

The defendant obtained the correct spelling of this name and inserted it in his general directory as appears by the third line above, but copied into its business directory the incorrect spelling as shown by the first and second lines.

(4)

Business heading in both directories, LEATHER DEALERS.

C. D. (8) 2086. Magoun Leather Co. 59 High

D. D. 1708. Magoun Leather Co. 59 High

This company moved from 59 High Street before defendant's original canvass. The name is blue-dotted in check book 33 from complainant's general directory, is not front-checked in check book 8 from complainant's business directory, and does not appear in defendant's general directory. This name and location were copied by the defendant into its business directory from complainant's copyrighted directory.

(5)

Business heading in both directories, REAL ESTATE AGENTS.

C. D. (11) 2151. Jewell Albert L. 209 Wash. rm. 21

D. D. 1762. Jewell A. L. 209 Wash. rm. 21

" 861 (General Directory). Jewell Albert L. real estate, 19 Congress, rm. 95, tel. res. at Brookline

The defendant obtained the correct business location of this man and inserted it in its general directory as appears by the third line above but copied into its business directory the incorrect location from complainant's copyrighted directory as shown by the first and second lines.

(6)

Business heading in both directories, RESTAURANTS.

C. D. (11) 2110*. Patten F. E. Mrs. 2280 Dorch. av.

D. D. 1766. Patten F. E. Mrs. 2280 Dorchester av. Dor.

" 1285 (General Directory). Patten F. E. lunch room. 2270 Dorchester av. Dor. res. 2260 do.

This name is not front-checked in check book 11, Business. It is blue-dotted in check book 44, where the correct location is given. The defendant obtained the correct location and inserted it in its general directory as appears by the third line above, but copied the incorrect location into its business directory from complainant's copyrighted directory as shown by the first and second lines.

(7)

Business heading in both directories, TEACHERS, ELOCUTION.

C. D. (12) 2139. Warren Edward, 176 Tremont

D. D. 1795. Warren Edward, 176 Tremont

This man moved from 176 Tremont before defendant's original canvass. The name is blue-dotted in check book 60 from complainant's general directory, is not front-checked in check book 12 from complainant's business directory and does not appear in defendant's general directory. The defendant copied this name and location into its business directory from complainant's copyrighted directory.

(8)

Business heading in both directories, TEACHERS, MUSIC.

C. D. (12) 1240*. Byrnes Alva, 162 Boylston

D. D. 1796. Byrnes Alva, 162 Boylston

" 393 (General Directory). Byrnes Alma, music teacher, res. Union ter. J. P.

This name is front-checked in check book 6 from complainant's general directory and appears in complainant's and in defendant's general directory with the correct spelling, Alma. It is also front-checked in check book 12 taken from complainant's business directory where it appears with the incorrect spelling, Alva. The defendant obtained the correct spelling, Alma, either from an original source or from complainant's general directory and inserted it in its general directory as shown by the third line above, but copied the incorrect spelling, Alva, into its business directory from complainant's copyrighted directory as shown by the first and second lines.

MASTER'S FINDING 16. Many instances of similarity in the forms of entry of special names and information in the two directories are indications of a general system of copying by the defendant into its directory from complainant's copyrighted directory, of which instances the following are illustrations:

(1)

C. D. (3) 170. Belknap George E. chairman Nautical Training School Commission, 110 State House, h. at Brookline

D. D. 292. Belknap George, chairman, Nautical Training School Commission, 110 State House, res. at Brookline

(2)

C. D. (4) 228. Bradlee Benjamin H. deputy clerk, U. S. circuit court, 112 P. O. bldg. h. at Newton Centre

D. D. 339. Bradlee Benjamin H. dep. clerk, U. S. circuit court, 112 P. O. bldg. res. at Newton Centre

(3)

C. D. (4) 228. Bradlee Roger W. clerk, 40 Water, rm. 15, bds. Blue Hill av. cor. Austin, Mat.

D. D. 339. Bradlee Roger W. clerk, 40 Water, rm. 15, res. Blue Hill av. cor. Austin, Mat.

(4)

C. D. (45) 1442. Pennock A. N. clockmaker, 147 Tremont, h. 250 Mass. av.

D. D. 1295. Pennock A. N. clockmaker, 147 Tremont, res. 250 Mass. av.

(5)

C. D. (45) 1442. Pennock F. G. foreman, 394 Atlantic av.

D. D. 1295. Pennock F. G. foreman, 394 Atlantic av.

(6)

C. D. (45) 1442. Pennock Artemas S. pres. 442 Tremont bldg. h. at S. Braintree

D. D. 1295. Pennock Artemas S. pres. 442 Tremont bldg. res. at S. Braintree

(7)

C. D. (59) 1798. Trowbridge Alexander H. clerk, U. S. circuit court, 112 P. O. bldg. h. at Brookline

D. D. 27**. Trowbridge Alexander H. clerk, U. S. Circuit Court, 112 P. O. bldg. res. at Bro.

(8)

C. D. (59) 1798. Trowbridge Herbert W. clerk, Custom House and accountant, 82 Devonshire, rm. 28, h. at Stoughton

D. D. 27**. Trowbridge Herbert W. clerk, Custom House, and accountant, 82 Devonshire, rm. 28, res. at Stoughton

CONCLUSIONS OF LAW.

FIRST: The complainant is entitled to an injunction against the defendant from using or selling or offering for sale any copy of its 1904 City Directory of Boston so long as it contains

(1) in its list of Office Buildings, Halls, etc., on page 173, the name and location McKinley Hall, 24 W. Concord St.,

(2) in its general directory the names and information connected therewith set out in Master's Findings 7, 8, 9, 10, 11 and 14,

(3) in its general directory the names and the information referred to in Master's Finding 9 as not front-checked in the check books and so not obtained by original canvass, and not blue-dotted and so not obtained from original sources upon questions drawn, but which are not included in Master's Schedule C, and

(4) in its business directory the fictitious names and locations Rogers Robert L. 312 Maverick, on page 1969, and Jones G. W. 1650 Dorchester av., on page 2151, and the sixteen (16) names and information in the form described in Master's Findings 15 and 15A.

SECOND: The complainant is entitled to a decree for an accounting for profits derived by the defendant from, and by reason of, its incorporating in its 1904 City Directory of Boston the names and information specified in the above first conclusion of law in paragraphs (1), (2), (3) and (4), and from the manufacture and sale of said directory in so far as such profits are attributable to such incorporating therein of said names and information.

Respectfully submitted,

JOHN G. STETSON, *Master.*

MASTER'S SCHEDULE A, Finding 7.

Deaths Before Attempted Verifications.

(1)

C. D. (2) 111. Armstead, L. H clerk, 43 Franklin, h. at Waltham
D. D. 242. Armstead, L. H. clerk, 43 Franklin, res. at Waltham

(2)

C. D. (9) 414. Cooke George P. designer, 110 Summer, rm. 21, h. at Newtonville
D. D. 497. Cooke George P. designer, 110 Summer, rm. 21, res. at Newtonville

(3)

C. D. (10) 437. Crane Charles F. clerk, 77 Wash. north, h. at Camb.
D. D. 517. Crane Charles F. clerk, 77 Wash. north, res. at Camb.

(4)

C. D. (12) 517. Dexter George, banker and broker, 10 State, h. 1148 Adams, L. M.
D. D. 584. Dexter George, banker and broker, 10 State, res. 1148 Adams, L. M.

(5)

C. D. (17) 653. Fitzgerald William J. shipper, 64 Wash. bds. 68 Moulton, Chsn.
D. D. 700. Fitzgerald William J. shipper, 64 Wash. res. 68 Moulton, Chsn.

(6)

C. D. (19) 719. Gearin Stephen J. boat joiner, h. 274 E. Cottage, Dor.
D. D. 37. Gearin Stephen J. boat joiner, res. 274 E. Cottage, Dor.

(7)

C. D. (19) 723. Gerrish George H. h. 73 Kendall
D. D. 40. Gerrish George H. res. 73 Kendall, Rox.

(8)

C. D. (20) 778. Greenleaf David L. clerk, 55 Blackstone, bds. at Everett
D. D. 88. Greenleaf David L. clerk, 55 Blackstone, res. at Everett

Twenty-one (21) other instances of deaths before attempted verifications are omitted in printing this schedule; subsequently printed, commencing with page 44.

MASTER'S SCHEDULE B, Finding 8.

Names Neither Front-Checked Nor Blue-Dotted.

(1)

C. D. (19) 733. Gilman Charles B. mechanical engineer, h., 3239 Wash. J. P.
D. D. 50*. Gilman Charles B. mechanical engineer, res. 3239 Wash. J. P.

(2)

C. D. (19) 733. Gilman Caribel, teacher, bds. 5 Alveston, J. P.
D. D. 50*. Gilman Caribel, teacher, res. 5 Alveston, J. P.

(3)

C. D. (19) 733. Gilman Edward C. foreman, h. 15 Charles, Dor.
D. D. 50*. Gilman Edward C. foreman, res. 15 Charles, Dor.

(4)

C. D. (19) 733. Gilman Grace M. teacher, bds. 5 Alveston, J. P.
D. D. 50*. Gilman Grace M. teacher, res. 5 Alveston, J. P.

(5)

C. D. (19) 733. Gilman Joseph M. salesman, 103 Medford, Chsn. h. at Greenwood
D. D. 50*. Gilman Joseph M. salesman, 103 Medford, Chsn. res. at Greenwood

(6)

C. D. (19) 733. Gilman Louis J. h. 1 Oakville av. Rox.
D. D. 50*. Gilman Louis J. res. 1 Oakville av. Rox.

(7)

C. D. (19) 733. Gilman William H. boots and shoes, 94 Cambridge, h. 27 S. Russell
D. D. 50*. Gilman William H. boots and shoes, 94 Cambridge, res. 27 S. Russell

(8)

C. D. (19) 734. Gilmore Ada Wells, music teacher, 179 Princeton, E. B. h. do.
D. D. 50*. Gilmore Ada Wells, music teacher, 179 Princeton, E. B. res. do.

(9)

C. D. (19) 734. Gilmore Annie Mrs. grocer, 465 E. Eighth, S. B. h. do.
D. D. 50*. Gilmore Annie Mrs. grocer, 465 E. Eighth, S. B. res. do.

(10)

C. D. (19) 734. Gilmore John, foreman machinist, 100 Condor, E. B. h. 206 Lexington, do.
D. D. 51*. Gilmore John, foreman machinist, 100 Condor, E .B. res. 206 Lexington, do.

(11)

C. D. (19) 734. Gilpatric Edgar F. dental student, bds. 45 Forest, Rox.
D. D. 51*. Gilpatric Edgar F. dental student, res. 45 Forest, Rox.

(12)

C. D. (19) 734. Gilpatrick Samuel S. florist, 1421 Tremont, Rox. h. 61 Terrace, do.
D. D. 51*. Gilpatrick Samuel S. florist, 1421 Tremont, Rox. res. 61 Terrace, do.

(13)

C. D. (19) 734. Gilpatrick T. B. Mrs. florist, 1421 Tremont, Rox. h. 61 Terrace, do.
D. D. 51*. Gilpatrick T. B. Mrs. florist, 1421 Tremont, Rox. res. 61 Terrace, do.

MASTER'S SCHEDULE C, Finding 9.

Names Neither Front-Checked Nor Blue-Dotted.

Pages 81 and 82.

C. D. (1) 81. Addison William S. clerk, pier 1, foot Sleeper, bds. 24 Symmes, Ros.
D. D. 216. Addison William S. clerk, res. 24 Symmes, Ros.

Pages 181 and 182.

C. D. (3) 181. Berman Charles J. inspector, city yard, E. Eagle, E. B. bds. 170 London, do.
D. D. 301. Berman Charles, inspector, res. 170 London, E. B.

C. D. (3) 182. Bernstein Charles D. clerk, 14 Wash. bds. 30 Lowell
D. D. 301. Bernstein Charles D. res. 30 Lowell

C. D. (3) 182. Bernstein Morris H. teamster, 32 Parmenter, h. 42 Mt. Vernon, Chsn.
D. D. 301. Bernstein Morris H. teamster, res. 42 Mt. Vernon, Chsn.

C. D. (3) 182. Berrigan Edward W. carpenter, 114 Broad, bds. 192 Neponset av. Dor.
D. D. 302. Berrigan Edward W. carpenter, 114 Broad, res. 192 Neponset av. Dor.

C. D. (3) 182. Berrill Henry W. clerk, 101 Milk, rm. 602, bds. 101 Walnut av. Rox.
D. D. 312. Berrill Henry W. clerk, res. 101 Walnut av. Rox.

D. (3) 182. Berry Charles H. painter, 25 Gurney, Rox. h. 61 Summit av. Br.
D. D. 302. Berry Charles H. painter, res. 61 Summit av. Br.

Pages 281 and 282.

C. D. (6) 281. Burns Henry J. paper hanger, h. 126 Everett, E. B.
D. D. 384. Burns Henry J. paper hanger, res. 126 Everett, E. B.

C. D. (6) 282. Burns John F. printer, 393 Chelsea, E. B. bds. 374 Bremen, do.
D. D. 384. Burns John F. printer, res. 374 Bremen, E. B.

C. D. (6) 282. Burns John H. coachman, h. 328 Newbury
D. D. 384. Burns John H. coachman, res. 328 Newbury

C. D. (6) 282. Burns Joseph P. clerk, bds. 25 Fulda, Rox.
D. D. 385. Burns Joseph P. clerk, res. 25 Fulda, Rox.

Pages 381 and 382.

C. D. (8) 382. Colbert William J. news agent, 49 Arch, h. 11 Telegraph, S. B.
D. D. 469. Colbert William J. news agent, res. 11 Telegraph, S. B.

C. D. (8) 382. Colburn Fred R. clerk, 620 Atlantic av. rm. 16, bds. 2160 Centre, W. R.
D. D. 469. Colburn Fred R. clerk, res. 2160 Centre, W. R.

Pages 481 and 482.

C. D. (11) 481. Damm Martin F. musician, h. 29 Sheridan, J. P.
D. D. 553. Damm Martin F. musician, res. 29 Sheridan, J. P.

C. D. (11) 481. Damrell Thomas, carpenter, 1272 Washington, h. 86 Brunswick, Rox.
D. D. 554. Damrell Thomas, carpenter, 1272 Wash. res. 86 Brunswick

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MASTER'S SCHEDULE D, Finding 10.

Removals Before Attempted Verifications.

(1)

C. D. (1) 76. Abrams Julius, grocer, 326 Blue Hill av. Rox. h. 60 Bartlett, do.
D. D. 212. Abrams Julius, grocer, 326 Blue Hill av. Rox. res. 60 Bartlett, do.

(2)

C. D. (1) 81. Adamson Thomas W. grocer, 1825 Dorchester av. Dor. h. do.
D. D. 216. Adamson Thomas W. grocer, 1825 Dorchester av. Dor. res. do.

(3)

C. D. (3) 183. Berry J. Fred (Berry & Ferguson) 141 Milk and 45 Medford, Chsn. h. at Somerville
D. D. 303. Berry J. Fred (Berry & Ferguson) 141 Milk and 45 Medford, Chsn. res. at Som.

(4)

C. D. (6) 281. Burns Harry C. draughtsman, 53 State, rm. 1110, bds. at Brookline
D. D. 384. Burns Harry C. draughtsman, 53 State, rm. 1110, res. at Brookline

(5)

C. D. (6) 294. Cady Francis E. asst. Mass. Inst. Tech. h. at Brookline
D. D. 395. Cady Francis E. asst. Mass. Inst. Tech. res. at Brookline

(6)

C. D. (7) 336. Chadwick John, druggist, rms. 156 Warren av.
D. D. 431. Chadwick John, druggist, res. 156 Warren av.

(7)

C. D. (9) 430. Coulthurst James C. clerk, 683 Atlantic av. rm. 65, bds. at Danvers
D. D. 510. Coulthurst James C. clerk, 683 Atlantic av. rm. 65, res. at Danvers

(8)

C. D. (11)	492.	Davis Morgan T. supt. 114 Dudley, Rox. h. 22 Greenville, do.
D. D.	863.	Davis Morgan T. supt. 114 Dudley, Rox. res. 22 Greenville, do.

Thirty-eight (38) other instances of removals before attempted verifications are omitted in printing this schedule; subsequently printed commencing with page 46.

MASTER'S SCHEDULE E, Finding 11.

Errors Copied from Complainant's Copyrighted Directory into Defendant's Directory.

(1)

C. D. (1)	98.	Ames Herbert F. salesman, 39 India, h. at Everett
D. D.	231.	Ames Herbert F. salesman, 39 India, res. at Everett
"	"	Ames Bertrand F. salesman, 39 India, res. at Everett

(2)

C. D. (3)	681.	Beckwith Leslie A. clerk, 168 Devonshire, rms. 7 Follen
D. D.	290.	Beckwith Leslie A. clerk, 168 Devonshire, res. 7 Follen
"	"	Beckwith L. W. clerk, 168 Devonshire, res. 7 Follen

(3)

C. D. (6)	303.	Campbell Charles C. printer, 324 Wash. h. at Somerville
D. D.	403.	Campbell Charles C. printer, 324 Wash. res. at Som.
"	404.	Campbell George C. printer, 324 Wash. res. at Som.

(4)

C. D. (7)	326.	Carver George A. salesman, 30 Winter, h. 501 Shawmut av.
D. D.	422.	Carver George A. salesman, 30 Winter, res. 501 Shawmut av.
"	"	Carver George H. clerk, res. 501 Shawmut av.

(5)

C. D. (12)	508.	Dennett Jarvis, floorwalker, 5 Winter, h. 215 Heath, Rox.
D. D.	576.	Dennett Jarvis, floorwalker, 5 Winter, res. 215 Heath, Rox.
"	636.	Dennett James, buyer, 5 Winter, res. 215 Heath

(6)

C. D. (17)	676.	Forte Frank, hairdresser, 378 Atlantic av. h. 152 Albany
D. D.	1*.	Forte Frank, hairdresser, 378 Atlantic av. res. 152 Albany
"	"	Forti Frank, hairdresser, 378 Atlantic av. res. 153 Auburn

(7)

C. D. (18)	707.	Gallivan Timothy R. clerk, 77 Bedford, bds. at Braintree

D. D.	27*.	Gallivan Timothy R. clerk, 77 Bedford, res. at Braintree
"	28.	Galvin Timothy R. salesman, 77 Bedford, res. at Braintree
		(8)
C. D. (19)	717.	Gavaghan Michael J. jr. boilermaker, h. 331 Paris, E. B.
D. D.	36*.	Gavaghan Michael J. jr. boilermaker, res. 331 Paris, E. B.
"	"	Gavaghan Thomas F. machinist, res. 331 Paris, E. B.

Twenty-eight (28) other instances of errors copied from complainant's copyrighted directory into defendant's directory are omitted in printing this schedule; subsequently printed commencing with page 49.

August 26, 1904. The foregoing, except as corrected in accordance with Master's Notes 35, 38, 41 and 44, was submitted to counsel for both parties, Mr. Browne and Mr. Hunt, as a first draft report to be retained in the master's office till Thursday, September 15, 1904.

Counsel for both parties filed objections to said first draft report, entitled as follows: "Respondent's Objections to Master's Report", filed August 30, 1904, "Respondent's further Objections to Master's Report", filed September 2, 1904, and "Complainant's Action on Master's Draft Report", filed September 15, 1904. I have inserted in these papers Master's Notes 1 to 48, inclusive, showing my action thereon, and explaining such action in some particulars. Except so far as these notes modify my report, I overrule the objections of both parties. These objections with Master's notes inserted are as follows: —

RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.

[Filed with the Master August 30, 1904.]

(1) The respondent objects to so much of Master's Finding 6 as finds that agents and employés of respondent failed to make the verification therein referred to.

(2) The respondent objects to Master's Finding 7 in so far as it finds that an actual verification from original sources of information was impossible or was not made.

(3) The respondent objects to so much of Master's Finding 8 as finds that seven (7) of the persons therein mentioned had moved before the respondent commenced its canvass.

(4) The respondent objects to Master's Finding 9.

(5) The respondent objects to Master's Finding 10, and particularly to the part thereof which finds that an actual verification was impossible, and to that part which finds that the persons whose names are therein mentioned had moved prior to July 12, 1903, or July 1, 1903, or the time when attempted verifications were made.

(6) The respondent objects to Master's Finding 11 that the names of persons and information connected therewith are inserted in two forms.

(7) The respondent objects to so much of Master's Finding 14 as finds that the correct residence of the person there mentioned is 31 Sumner Street, Dorchester.

(8) The respondent objects to so much of Master's Finding 15 (1) as finds that the two names there mentioned are intended for the same person.

(9) The respondent objects to so much of Master's Finding 15 (2) as finds that the two names therein mentioned are intended to refer to the same person.

(10) The respondent objects to so much of the Master's Finding 15 (4) as finds the time of removal.

(11) The respondent objects to so much of Master's Finding 15 (5) as finds that the three entries there quoted are intended to refer to the same person.

(12) The respondent objects to so much of Master's Finding 15 (7) as finds that the person therein mentioned had moved before the respondent's canvass.

(13) The respondent objects to so much of Master's Finding 15 (8) as finds that the two names there mentioned intended to refer to the same person.

(14) The respondent objects to Master's Finding 16.

(15) The respondent objects to the Master's first conclusion of law.

(16) The respondent objects to the Master's second conclusion of law.

(17) The respondent objects to the ruling of the Master admitting in evidence hearsay statements as to what was or was not correct information.

(18) The respondent objects to the rulings of the Master admitting in evidence hearsay statements as to dates of removal.

(19) The respondent objects to the rulings of the Master admitting in evidence hearsay statements as to the fact of removal.

(20) The respondent objects to the rulings of the Master declining to strike out hearsay statements as to what was or was not correct information, as to the date of removal, and as to the fact of removal after they had been admitted.

(21) The respondent objects to the refusal of the Master to make the findings requested by it hereto attached.

(22) The respondent objects to the failure of the Master to make the rulings of law requested by it and hereto attached.

(23) The respondent makes again and insists upon the objections taken by him in the course of the trial as shown by the record.

[MASTER'S NOTE 1. Upon consideration of the above twenty-three (23) objections, I make no changes in my draft report; but I consider the findings requested in paragraph 22 and the rulings of law requested in paragraph 23, and make notes therein showing, and to some extent explaining, my action thereon.]

By its Solicitors,

GASTON, SNOW & SALTONSTALL.

RESPONDENT'S REQUEST FOR FINDINGS.

[ATTACHED TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.]

The respondent requests the following findings of facts:

* * * * * * * * * *

FOURTH: There has been no copying of the complainant's book by the respondent except in so far as the method of draw-

ing questions from the complainant's book adopted by the respondent may amount as a matter of law to copying.

[MASTER'S NOTE 2. I am unable to make this finding in view of the facts shown in Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15, 15A and 16.]

FIFTH: The respondent believed in good faith that it had the right to make such use of the complainant's book as it has made, and had been so advised by counsel.

[MASTER'S NOTE 3. The defendant is a corporation and as such could act only through its officers, agents and employés and could have no belief. It must be judged by the acts of its officers, agents and employés in its behalf. Some of its agents believed that it could lawfully use complainant's copyrighted directory to front-check such names as it had obtained information upon by its original canvass, to blue-dot such names, not front-checked, as it desired information upon, to draw questions on such names, which consisted in copying such names, and the information connected therewith, from complainant's copyrighted book on question slips, to ascertain from complainant's copyrighted book original sources of information, and to go to such original sources of information and verify, or correct if incorrect, the information contained on the question slips, and that it could lawfully incorporate in its directory the information so verified or corrected. If the defendant had made such use only of complainant's copyrighted directory, and had incorporated in its directory only such information as it so verified or corrected, I could not have made Master's Findings 7 to 16 inclusive, and 15A. In some way, however, and it is not important to determine in what way, the defendant did the copying set forth in those findings.]

SIXTH: The respondent has actually expended in compiling, printing and binding its directory about forty thousand (40,000) dollars.

[MASTER'S NOTE 4. I find as above requested.]

SEVENTH: The issue of an injunction such as is asked for would mean the total destruction of the respondent's investment in its directory.

[MASTER'S NOTE 5. I cannot say as to this; such an injunction as I find the complainant is entitled to by my first conclusion of law on page 12, would prevent the further use or sale of defendant's 1904 City Directory of Boston, so long as it contained the matters specified in said first conclusion of law.]

EIGHTH: There were at the time of the publication of the respondent's book, and are now, only 180 copies of the complainant's copyrighted book remaining for sale, and there is no sale for these. (Mr. Murdock's evidence, pages 398, 399.)

[MASTER'S NOTE 6. I find as requested.]

NINTH: The respondent made a *bona fide* canvass of the City of Boston in the course of compiling its book, employing for that purpose large numbers of men, and this canvass extended over a period of between four and six months.

[MASTER'S NOTE 7. I find as requested. See Master's Finding 5, page 12.]

TENTH: The general directory of the respondent's book contains some 50,000 more names than the general directory of the complainant's book.

[MASTER'S NOTE 8. Roughly speaking, yes.]

ELEVENTH: The street directory of the respondent's book contains several hundred more names than the street directory of the complainant's book, and also much additional information with reference to the streets. The complainant makes no claim of infringement in the street directory.

[MASTER'S NOTE 9. Roughly speaking, yes.]

TWELFTH: The respondent's general directory states whenever a person mentioned in it has a telephone, which is information not given by the complainant's directory.

[MASTER'S NOTE 10. Roughly speaking, yes.]

THIRTEENTH: The business directory of the respondent's book is, to a large extent, arranged under different headings from that of the complainant's book.

[MASTER'S NOTE 11. Roughly speaking, yes.]

FOURTEENTH: The number of names in the complainant's book, from which questions were drawn by the respondent, is about twelve per cent of the entire number of names therein contained (Mr. Hyde's evidence, page 350 — questions drawn on seventy-five per cent of the blue-dotted names).

[MASTER'S NOTE 12. Perhaps so. I have not made a close estimate of the percentage, and it is not material that I should do so.]

FIFTEENTH: Ninety per cent of the errors contained in the complainant's book in connection with names from which questions were drawn, have been corrected by the respondent.

[MASTER'S NOTE 13. I cannot say as to this.]

SIXTEENTH: I find that in those cases in which the respondent went to the complainant's book for information to direct it

to original sources of information, it actually made an independent investigation of the original sources of information in substantially all cases [MASTER'S NOTE 14. I cannot find this, considering the whole evidence before me. See Master's Findings 7, 10 and 14], and that in the remaining cases, if any, where no such investigation was made, this occurred by reason of the carelessness or fault of the individual canvassers [MASTER'S NOTE 15. The individual canvassers were the employés of the defendant and if through their carelessness or fault it transpired that the defendant inserted in its directory names and information copied from complainant's copyrighted directory, the defendant is responsible for such copying], and in disobedience to the instructions given by the respondent to its canvassers [MASTER'S NOTE 16. Some of the defendant's agents and employés gave instructions to defendant's canvassers and if from disobedience of the instructions so given it transpired that the defendant inserted in its directory names and information copied from complainant's copyrighted directory, the defendant is responsible for such copying].

SEVENTEENTH: I find that the respondent constantly and emphatically prohibited all of its employés from making any use of the complainant's book except for the purpose of drawing questions from it.

[MASTER'S NOTE 17. Some of the defendant's agents frequently and emphatically prohibited others of defendant's employés from making any use of complainant's copyrighted directory except for the purpose of drawing questions from it.]

EIGHTEENTH: The respondent has produced at the hearing the copy of the complainant's directory, which indicates the exact number of names checked and blue-dotted. It has produced large quantities of the original copy of its own book, and offered to produce the whole of such copy, which was not actually produced only because of its great bulk. It has also produced the original circulars, and some of the original schedules used by it in obtaining original information.

[MASTER'S NOTE 18. I find as above requested.]

NINETEENTH: The respondent put upon the stand as wit-

nesses eight or nine of the men employed by it as canvassers, and six of the women employed by it in office work, two of whom had acted as superintendents. It offered to produce any other canvassers and any other women employed by it whom counsel for the complainant might call for, and a stipulation signed by both counsel has been filed that the number of canvassers and that the number of women employed is so great as to make it impracticable and inconvenient to call them all as witnesses, and that no inference should be drawn against the respondent by reason of its failure so call as witnesses any others.

[MASTER'S NOTE 19. I find as above requested.]

TWENTIETH: The complainant's copyrighted book contains ten fictitious names, of which four are in the general directory. (Mr. Murdock, page 49.) There is no evidence that seven of these ten appear in the respondent's book at all.

[MASTER'S NOTE 20. I find as requested.]

TWENTY-FIRST: There is no evidence that any fictitious name appears in the respondent's general directory or in its street directory.

[MASTER'S NOTE 21. I find as requested.]

TWENTY-SECOND: The three alleged fictitious names which appear in the respondent's business directory and list of halls appear there because questions were drawn on them from the complainant's book which were not correctly investigated.

[MASTER'S NOTE 22. Three alleged fictitious names appear in respondent's business directory and list of halls, and these names and information connected therewith were not and could not be verified. See Master's Findings 12 and 13.]

TWENTY-THIRD: I find that the complainant can suffer no legal damage hereafter from the further sale of the respondent's book.

[MASTER'S NOTE 23. I cannot find as above requested; it is my opinion that the fact is otherwise. Such damages, however, if any, may be recovered in a civil action brought under Rev. Stat., Sect. 4964, as amended March 3, 1891, 26 Stat. 1109; they cannot be recovered in the present case by bill in equity for an injunction under which profits accruing to the infringer may be recovered, but not damages in addition thereto, as upon a bill in equity for an injunction for infringement of Letters Patent.]

TWENTY-FOURTH: The new directory of the complainant for the year 1904 was published by them early in the month of July, 1904, prior to the conclusion of the hearings before me in this case.

[MASTER'S NOTE 24. I find as requested.]

RESPONDENT'S REQUESTS FOR RULINGS.

[ATTACHED TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT.]

In the above-entitled cause the respondent requests the master to rule as follows:

(1) A compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call. *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 129 Fed. Rep. 761; *Dun* v. *International Mercantile Agency*, 127 Fed. Rep. 172; *Colliery Engineering Co.* v. *Ewald*, 126 Fed. Rep. 922; *Edw. Thompson Co.* v. *American Law Book Co.*, 122 Fed. Rep. 922; *Moffatt* v. *Gill*, 86 Law Times Rep. 405.

[MASTER'S NOTE 25. I rule as above requested.]

(2) One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct. *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 129 Fed. Rep. 761; *Dun International Mercantile Agency*, 127 Fed. Rep. 172; *Colliery Engineering Co.* v. *Ewald*, 126 Fed. Rep. 922; *Edw. Thompson Co.* v. *American Law Book Co.*, 122 Fed. Rep. 922; *Moffatt* v. *Gill*, 86 Law Times Rep. 404.

[MASTER'S NOTE 26. I rule as requested; but the compiler must go to the original sources of information, must ascertain how far the existing facts concur with the statements of the first directory and must print only what by means of his own investigation he has found to be correct.]

(3) The right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows they should be changed to correspond with the facts, and checking them as correct when they prove to be correct.

[MASTER'S NOTE 27. I rule as above requested.]

(4) The utmost legal damage which the plaintiff in this case can sustain by reason of the publication of an infringing book cannot (in view of the fact that there can be no further edition of its copyrighted book) exceed the entire value of all copies remaining in its hands for sale.

[MASTER'S NOTE 28. No damages can be recovered in this case which is upon a bill in equity for an injunction for an infringement of a copyright under which profits accruing to the infringer may be recovered, but not damages in addition thereto, as upon a bill in equity for an infringement of Letters Patent. See Master's Note 28.]

(5) There is no evidence to warrant a finding of error or of the date of removal in any case where the only evidence comes from witnesses who admit that they have no knowledge upon the subject except such as is derived from hearsay.

[MASTER'S NOTE 29. I rule as above requested.]

RESPONDENT'S FURTHER OBJECTIONS TO MASTER'S REPORT.

[FILED WITH THE MASTER SEPTEMBER 2, 1904.]

And now comes the respondent in the above-entitled cause, and prior to September 15, the date set by the Master, files with the Master the following further objections to his report:

FIRST. That the Master has failed to make any finding as to the amount of damage suffered by the complainant through the alleged infringement.

[MASTER'S NOTE 30. No question of damages is involved in the present reference. This is a reference preliminary to an interlocutory

decree which will be final so far as it concerns an injunction; an order for an accounting for profits is usually incorporated in such a decree. If the defendant has infringed, as found by me in Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15 and 15A, in which are specified 159 cases of copying by the defendant from complainant's copyrighted directory, namely:

In Finding	7,	Schedule A,	29	cases,
" "	8,	" B,	13	"
" "	9,	" C,	15	"
" "	10,	" D,	46	"
" "	11,	" E,	36	"
" "	12,		1	case,
" "	13,		2	cases,
" "	14,		1	case,
" "	15,		8	cases,
" "	15A,		8	"

and has also infringed by copying, as found by me in Master's Finding 9, in a large number of cases not specifically specified, it logically follows that the defendant should be enjoined as stated by me in my first conclusion of law, on page 12 [20] of this report. The profits to be recovered may be determined on a reference to be made a part of or to follow the decree for injunction. It is not my duty to determine these profits on this reference. The damages, if any, resulting from the infringement, may be determined in a civil action under Rev. Stat. 4964, as amended March 3, 1891. See Master's Notes 23 and 28.]

SECOND: That the Master has failed to make any finding as to whether any damage alleged to be suffered by the complainant is either serious or irreparable.

[MASTER'S NOTE 31. See Master's Note 30.]

THIRD: That the Master has failed to make any finding as to whether the injury done to the respondent by an injunction would be disproportionate to the benefit derived by the complainant.

[MASTER'S NOTE 32. See Master's Note 30.]

FOURTH: That the Master has failed to make any finding as to the number of copies of the complainant's copyrighted book which remained in existence, or could be sold at the time of the alleged infringement, or at the time of the hearing.

[MASTER'S NOTE 33. Such finding would not be pertinent to any question involved in this reference. See Master's Notes 23, 28 and 30.]

FIFTH: That the Master has failed to make any finding as to the good faith of the respondent corporation or its officers.

[MASTER'S NOTE 34. The defendant corporation must be judged by what it has done through its officers, agents and employés, which, so far

as the alleged infringement is concerned, is shown by Master's Findings 7, 8, 9, 10, 11, 12, 13, 14, 15 and 15A. I have not intended, and do not now intend, in this report, to pass upon the good faith of any one. It is not necessary to do so upon this reference.]

By its Solicitors,

GASTON, SNOW & SALTONSTALL.

COMPLAINANT'S ACTION ON MASTER'S DRAFT REPORT.

[FILED WITH THE MASTER SEPTEMBER 15, 1904.]

1. It is submitted that on page 1 [9], in third line of the paragraph beginning "Front Checks", the word "their" should be changed to "its".

[MASTER'S NOTE 35. I adopt Mr. Browne's suggestion, and have changed my report accordingly.]

2. That on page 2 [10], about the middle of the page, the words "mutually agreed upon" should be substituted for the words "furnished by Mr. Browne".

[MASTER'S NOTE 36. The record reads: "It is agreed that the evidence in this case may be taken stenographically." I understood that the stenographers were furnished by Mr. Browne, but as to this I may be in error. There may have been an agreement of which I was not advised.]

3. It is submitted that on page 4 [12], in the paragraph headed "Master's Finding 7", the words "it is impossible that" should be inserted before the words "an actual verification" in the seventh line of said paragraph, and that the word "made" should be substituted for the word "impossible" in the eighth line thereof.

MASTER'S NOTE 37. My statement as it stands, means substantially the same as it would if amended as suggested by Mr. Browne.]

On page 5 [13], line 6, the word "eleven" should be substituted for the words "the first seven".

[MASTER'S NOTE 38. On re-examination of my draft report, I discover that seven (*but not the first seven*) of the persons represented by the names on Master's Schedule B, moved from the residences or places of business given in both directories before the defendant commenced its original canvass, namely: (1) Charles B. Gilman, (2) Caribel Gilman, (4) Grace M. Gilman, (8) Ada Wells Gilman, (11) Edgar F. Gilpatric, (12) Samuel S. Gilpatrick and (13) Mrs. T. B. Gilpatrick. I accordingly amend Master's Finding 8, page 5 [13], line 6, by striking out the words "the first", and I confirm said finding as so amended. My error arose from re-arranging the names alphabetically after I had drafted the finding.]

4. At the end of the paragraph headed "Master's Finding 9", the following should be inserted: "In the complainant's General Directory, containing 1725 pages, there would be found 2587 such transfers in all, if the same proportion holds throughout."

[MASTER'S NOTE 39. What Mr. Browne suggests should be inserted at the end of Master's Finding 9 as an obvious inference from the last paragraph of that finding. It is not necessary for me to amend this finding.]

5. In the paragraph beginning "Master's Finding 10", in the seventh line thereof, after "but" insert "it is impossible that". In the eighth line of said paragraph substitute "made" for "impossible".

[MASTER'S NOTE 40. My statement as it stands means substantially the same as it would if amended as suggested by Mr. Browne.]

6. It is submitted that in "Master's Finding 11" there should be added to the thirty-five instances of double insertion contained in "Schedule E", the following instances, and that the other findings under this head should be corrected numerically accordingly:

(1) Allen, Robert C., should be Allan, page 18.

(2) Anderson, Charles A., should be William C., page 59.

(3) Benthall, Fred J., should be Bentholl, page 23.

(4) Coburn, William M., 133 Harvard av., should be William B., 13 Harvard av., page 43.

(5) Demers, Joseph, should be James, page 43.

(6) Eastman, Charles, should be Charles E., page 19.

(7) Hale, George A., should be George E., page 19.

(8) Hirschman, Harry, should be Hirshman, page 20.

(9) Lightford, Harry L., should be Lightfoot, Harry W., page 20.

(10) McGibbon, John J., should be John D., page 64.

(11) Rigby, James J., 54 Dorchester, should be 54 Newport, page 45.

(12) Ross, William R., should be Jordan, William Roscoe, page 21.

(13) Saunders, Edward L., 8 Joy, should be Edmund S., 10 Joy, page 21.

(14) Sheerin, Thomas, Rev., should be John, Rev., page 45.

(15) Stevenson, Francis, 564 Washington, should be Frederick, page 45.

[MASTER'S NOTE 41. In making Master's Schedule E, I examined each of the instances specified by Mr. Browne, except No. 8, and decided not to include them in that schedule. I have re-examined these instances and am satisfied that my decision was correct.

No. 8 might have been included in Master's Schedule E, as follows:

(36)

C. D. (23) 883. Hirschman Harry, trimmer, 18 Summer, bds. 124 Union park.

D. D. 800. Hirschman Harry, trimmer, 18 Summer, res. 124 Union pk.

" 800. Hirshman Harry, clothing trimmer, 18 Summer, res. 124 Union pk. st.

I now add this instance to Master's Schedule E, and amend Master's Finding 11 by substituting "thirty-six (36)" for "thirty-five (35)" in two places on page 6 [14].]

7. In the paragraph headed "Master's Finding 13", in the seventh line thereof, after the word "av." insert the following sentence: "These were also traps intentionally set, and the defendant fell into them also."

[MASTER'S NOTE 42. This sentence is easily read into Master's Finding 13 as it stands. It is not necessary to amend the finding.]

8. On page 8 [16], before "Master's Finding 15", insert a new paragraph as follows:

"Master's Finding 14A. The defendant transferred to all parts of its Business Directory from the complainant's copyrighted directory many names and information connected therewith, which it did not obtain by its original canvass. As it is admitted, 'the defendant's Business Directory was checked up from original information in the same way as the General' (Hyde, page 265), but there was no blue-dotting. It has appeared that the number of names so transferred in check books 2 and 3, taken as samples of the whole, was about forty per cent of all the names appearing in the defendant's Business Directory."

[MASTER'S NOTE 43. I decline to incorporate the above into my report as Master's Finding 14A. The defendant introduced evidence tending to prove that it made a use of complainant's business directory similar to that which it claimed to have made of complainant's general directory, that is

to say, that it front-checked the names as to which it obtained information by its original canvass, and drew questions upon slips of paper on such names in small type as it did not front-check, and using these question slips went to original sources of information, verified the information contained on the question slips or corrected it where it should be corrected, and transferred to its directory the information so verified or corrected, This evidence is uncontradicted except as to two (2) specific instances. specified in Master's Finding 13, eight (8) specific instances specified in Master's Finding 15, and eight (8) specific instances specified in Master's Finding 15A, made upon consideration of Mr. Browne's suggestion which immediately follows this note.]

9. On page 10 [18], before the paragraph beginning "Master's Finding 16", insert "Other cases of errors copied in the Business Directory are as follows:

(1) D. D., page 1612, Barbers, Alario, Joseph, testimony, page 75.

(2) D. D., page 1760, Real Estate, Beals & Newhall, testimony, page 75.

(3) D. D., page 1649, Dress-makers, Burham, S. E. testimony, page 75.

(4) D. D., page 1776, Shoe-makers, Dugas, John, page 74.

(5) D. D., page 1778, Shoe Manufacturers, Farrior, Brown Shoe Company, page 76.

(6) D. D., page 1610, Bakers, Langerfeld, John P., page 78.

(7) D. D., page 1799, Teachers of Music, Moore, Grace T., page 78.

(8) D. D., page 1623, Butter and Cheese, Mugford, B. E., page 74.

(9) D. D., page 1777, Shoe-makers, Petro, Frederick, page 74.

(10) D. D., page 1777, Shoe-makers, Riley, Patrick J., page 74.

(11) D. D., page 1760, Real Estate Brokers, Adams Real Estate Trust Company, page 18.

(12) D. D., page 1700, Lawyers, Chisholm, George C., page 19.

(13) D. D., page 1649, Dress-makers, Churchill, Mrs. M. H., page 19.

(14) D. D., page 1606, Artists, Enneking, John J., page 19.

(15) D. D., page 1721, Milliners, Gibbs, Carrie E., page 19.

(16) D. D., page 1787, Stock Brokers, Gile, Daniel D., page 43.

(17) D. D., page 1702, Lawyers, Hay, Robert T., page 19.

(18) D. D., page 1625, Carpenters, Henderson, W. T., page 43.

(19) D. D., page 1671, Grocers, Johnson, Adolph O., page 47.

(20) D. D., page 1672, Grocers, Laro V., page 20.

(21) D. D., page 1650, Dress-makers, Leach, Lile, page 44.

(22) D. D., page 1704, Lawyers, Morrell, George C., page 44.

(23) D. D., page 1797, Teachers of Music, Shedd, Heman, page 45.

(24) D. D., page 1601, Accountants, Watson, George, page 21.

(25) D. D., page 1610, Bakers, Westcott, Jennie, page 68.

In all the instances last above mentioned, the defendant's General Directory either fails to show the name at all, or shows it with different information. In every case the information furnished in the defendant's Business Directory is an error copied from the complainant's Business Directory.

[MASTER'S NOTE 14. I have now examined the above instances which were not called to my attention specifically in complainant's brief nor at the argument before me, and in view thereof make the following finding:

MASTER'S FINDING 15A. Other cases of errors copied into the defendant's Business Directory, making a part of its 1904 City Directory of Boston, from complainant's copyrighted directory are as follows:

(9) Mr. BROWNE'S (10)

Business heading, BOOT AND SHOE MAKERS in complainant's and SHOE-MAKERS in defendant's directory.

C. D. (2) 1967. Riley Patrick J. 145 Albany
D. D. 1777. Riley Patrick J. 145 Albany
" 1386. Riley Patrick J. boots and shoes, 7 Oak, res 93 do.

(10) Mr. BROWNE'S (12)

Business heading in both directories, LAWYERS.

C. D. (8) 2078 Chisholm George C. 15 Court sq. rm. 2
D. D. 1700. Chisholm George C. 15 Court sq. r. 2
" 443. Chisholm George C. real estate, 15 Court Sq. rm. 2 res. at Sharon.

(11) Mr. BROWNE'S (15)

Business heading in both directories, MILLINERS.

C. D. (9) 2103. Gibbs Carrie E. 110 Hotel Pelham
D. D. 1721. Gibbs Carrie E. 110 Hotel Pelham
" 43*. Gibbs Carrie A. Mrs. millinery, 110 Hotel Pelham, res. do.

(12) Mr. Browne's (17)

Business heading in both directories, Lawyers.

C. D. (8) 2080. Hay Robert T. 53 State, rm. 712
D. D. 1702. Hay Robert T. 53 State, rm. 712
" .766. Hay Robert T. (Carret, Chase & Hay) lawyer 53 State, rm. 713, res. 2 Quincy pl. Rox.

(13) Mr. Browne's (18)

Business heading in both directories, Carpenters and Builders.

C. D. (3) 1983. Henderson W. T. 35 Crescent ave. Dor.
D. D. 1625. Henderson W. T. 35 Crescent ave. Dor.
" 780. Henderson William T. Carpenter, res. 53 Crescent ave. Dor.

(14) Mr. Browne's (19)

Business heading in both directories, Grocers.

C. D. (6) 2046. Johnson Adolph O. 498 Sumner E. B.
D. D. 1671. Johnson Adolph O. 498 Sumner E. B.
" 862. Johnson Adolph O. dry goods 322 Sumner, E. B. and grocer, 487 do. res. 498 do.

(15) Mr. Browne's (20)

Business heading in both directories, Grocers.

C. D. (6) 2046. Laro V. 469 Hanover
D. D. 1672. Laro V. 469 Hanover
" 928. Lauro Vincenzo, grocer, 469 Hanover, res. do.

(16) Mr. Browne's (25)

Business heading in both directories, Bakers.

C. D. (1) 1956. Westcott Jennie 85 Orleans
D. D. 1610. Westcott Jennie 85 Orleans
C. D. 1870. Westcott Jennie, baker, 95 Orleans, E. B. h. 222 Everett, do.

I decline to make a similar finding as to Mr. Browne's instances, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 16, 21, 22, 23 and 24, preferring not to find copying where there is not corroborative proof thereof from an inspection of defendant's directory, except in the single instance of Westcott Jennie as to which the evidence of complainant's witness, Alexander Hutchins, (typewritten page 68) is plenary.

COMPLAINANT'S REQUESTS FOR RULINGS.

Upon the findings of fact made by the Master, it is requested that he should find as conclusions of law instead of the findings made by him, as follows:

First: From the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied nu-

merous names of persons occurring in the complainant's directory, but deceased or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant from using, selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

NOTE. This conclusion is based upon the assumption that whereas the defendant's witnesses have testified that in every case where information was not obtained by original canvass it was obtained by verification of matter copied from complainant's book, yet it appearing that in these isolated and widely separated instances such was not the fact, there is ground for finding that in no case was the matter copied from complainant's book verified, but that all matter so copied was printed as copied, without verification. If this be found, the matter so printed forming a large portion of the defendant's entire book, and not being readily distinguishable from the rest, the defendant, having wrongfully mixed the matter of another with his own, must suffer the consequences.

[MASTER'S NOTE 45. I decline to report a conclusion of law in the form above suggested by Mr. Browne. I have found as facts substantially that the defendant copied into its directory from complainant's copyrighted directory the three trap names mentioned in Master's Findings 12 and 13, and has so copied the errors specified in Master's Findings 7, 8, 10, 11, 14, 15 and 15A, and the errors referred to in Master's Finding 9. I amend my first conclusions of law on page 12 [20] by substituting for the words, "Master's Findings 15", at the end of paragraph (4), the words, "Master's Findings 15 and 15A", and, as thus amended, I confirm my said first conclusion of law.]

SECOND: If the complainant is not entitled to an injunction as aforesaid, then that it is entitled to an injunction against the defendant from using or selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of its 1904 City Directory of Boston so long as it contains the matter set forth in paragraphs 1, 2, 3 and 4, on page 12 [20] of the Master's Report.

[MASTER'S NOTE 46. Yes; that was the intent of my first conclusion of law on page 12 [20], and I assent that the words, "or otherwise disposing of, or offering to dispose of", may be inserted in the second line of my said first conclusion of law, after the words, "or offering for sale".]

THIRD: If the first conclusion of law above set forth is correct, the complainant is entitled to a decree for an accounting of profits derived by defendant from and by reason of its manufacture, use, sale, or delivery of its 1904 City Directory of Boston.

[MASTER'S NOTE 47. Yes; but in Master's Note 45 I have declined to report a conclusion of law in the form set out in Mr. Browne's above paragraph FIRST.]

FOURTH: If the second conclusion of law above set forth is sustained, the complainant is entitled to a decree as set forth in the clause marked "SECOND" at the end of the Master's present findings.

[MASTER'S NOTE 48. Yes; the complainant is entitled to such a decree.]

Respectfully submitted,

ALEX. P. BROWNE,

Solicitor and of Counsel for Complainant.

Respectfully submitted,

JOHN G. STETSON, *Master.*

SEPTEMBER 30, 1904. The foregoing was submitted to counsel for both parties, Mr. Browne and Mr. Hunt, as a second draft report to be retained in the Master's office till Wednesday, October 5, 1904.

OCTOBER 3, 1904. Mr. Hunt sent to me a letter from which I quote the following:

I think that, to protect fully the rights of my clients, I must ask you to report all the evidence in Sampson & Murdock Co. *v.* Seaver-Radford Co.

Upon this request by Mr. Hunt in behalf of the defendant I report all the evidence before me as required by the order of reference of May 17, 1904, and I annex a schedule of this evidence to this report.

OCTOBER 15, 1904. No further objections being taken by either party and no further requests being made by either party, I make this my final report.

Respectfully submitted,

JOHN G. STETSON, *Master.*

MASTER'S SCHEDULE A, FINDING 7.

DEATHS BEFORE ATTEMPTED VERIFICATIONS.

[MEMORANDUM. Instances of deaths before attempted verifications (1) to (8), inclusive, being printed on page 21, are omitted in printing this schedule. JOHN G. STETSON, *Clerk.*]

(9)

C. D. (21) 835. Harvey William F. 104 Kingston, b. 92 Wenham, J. P.
D. D. 759. Harvey William F. 104 Kingston, res. 92 Wenham, J. P.

(10)

C. D. (22) 847. Hayes John B. trunk maker, 628 Wash. h. at Camb.
D. D. 768. Hayes John B. trunk maker, 628 Wash. res. at Camb.

(11)

C. D. (23) 883. Hitchcock A. Lawrence, 101 Tremont, rm. 711, h. at Newton
D. D. 800. Hitchcock A. Lawrence, 101 Tremont, rm. 711, res. at Newton

(12)

C. D. (30) 1060. Lawrence Francis W. pres. Globe Gas Light Co. 77 Union, h. at Longwood
D. D. 931. Lawrence Francis W. pres. Globe Gas Light Co. 77 Union, res. at Longwood

(11)

C. D. (34) 1167. Marston N. Dearborn, salesman, 177 High, house at Everett
D. D. 1032. Marston N. Dearborn, salesman, 174 High, res. at Everett

(14)

C. D. (35) 1189. McCarthy Daniel J. cloth sponger, 12 Columbia, h. at Cambridge
D. D. 1055. McCarthy Daniel J. cloth sponger, 12 Columbia, res. at E. Camb.

(15)

C. D. (37) 1255. Mead Charles E. (Mead, Mason & Co.) 520 Tremont bldg. h. at Everett
D. D. 1119. Mead Charles E. (Mead, Mason & Co.) 520 Tremont bldg. res. at Everett

(16)

C. D. (40) 1325. Murphy Daniel J. boxes, h. 18 Newport, Dor.
D. D. 1184. Murphy Daniel J. boxes, res. 18 Newport, Dor.

(17)

C. D. (42) 1372. Norton John A. clerk, Battery Wharf, h. at Chelsea
D. D. 1229. Norton John A. clerk, Battery Wharf, res. at Chelsea

(18)

C. D. (44) 1423. Parker Edward J. real estate, h. 19 Windsor, Rox.
D. D. 1277. Parker Edward J. real estate, res. 19 Windsor, Rox.

(19)

C. D. (16) 1156. Phillips Charles P. real estate, h. 809 Albany, Rox.
D. D. 1308. Phillips Charles P. real estate, 809 Albany, Rox.

(20)

C. D. (48) 1514. Reardon William A. rulemaker, 190 Congress, bds. 21 Oak
D. D. 1361. Reardon William A. rulemaker, 190 Congress, res. 21 Oak

(21)

C. D. (50) 1559. Rogers George W. sailmaker, 95 Commercial, h. at Chelsea
D. D. 1403. Rogers George W. sailmaker, 95 Commercial, res. at Chelsea

(22)

C. D. (51) 1567. Rosenthal Joseph, clothing, 50 Salem, h. 31 do.
D. D. 1411. Rosenthal Joseph, clothing, 50 Salem, res. 31 do.

(23)

C. D. (53) 1610. Shepley George F. (Shepley, Rutan & Coolidge) 122 Ames bldg. h. at Brookline
D. D. 1478. Shepley George F. (Shepley, Rutan & Coolidge) 122 Ames bldg. res. at Brookline

(24)

C. D. (56) 1713. Stewart James D. clerk, 96 Green, Chsn. bds. at Chelsea
D. D. 1517. Stewart James D. clerk, 96 Green, Chsn. res. at Chelsea

(25)

C. D. (62) 1889. Whitney Harley A. salesman, 55 Blackstone, House at Somerville
D. D. 107**. Whitney Harley A. salesman, 55 Blackstone, res. at Somerville

(26)

C. D. (3) 170. Belknap George E. chairman Nautical Training School Commission, 110 State House, h. at Brookline
D. D. 292. Belknap George E. chairman Nautical Training School Commission, 110 State House, res. at Brookline

(27)

C. D. (20) 779. Gregory Franklin E. 162 High, h. at Framingham
D. D. 90*. Gregory Franklin E. 126 High, res. at Framingham

(28)

C. D. (28) 1021. Kimball Henry W. baker, 754 Wash. Dor. h. 756 do.
D. D. 9121. Kimball Henry W. baker, 754 Wash. Dor. res. 756 do.

(29)

C. D. (56) 1740. Suminsby Rodney F. water inspector, City Hall, h. 57 Bernard, Dor.
D. D. 1574. Siminsby Rodney F. water inspector, City Hall, res. 57 Bernard, Dor.

MASTER'S SCHEDULE B, FINDING 8.

NAMES NEITHER FRONT-CHECKED NOR BLUE-DOTTED.

[MEMORANDUM. This Schedule B, Finding 8, is printed in full in Master's Report, pages 13, [21] and 14 [22].]

MASTER'S SCHEDULE C, FINDING 9.

NAMES NEITHER FRONT-CHECKED NOR BLUE-DOTTED.

[MEMORANDUM. This Schedule C, Finding 9, is printed in full in Master's Report, pages 15 [23] and 16 [24].]

MASTER'S SCHEDULE D, FINDING 10.

REMOVALS BEFORE ATTEMPTED VERIFICATIONS.

[MEMORANDUM. Instances of removals before attempted verifications (1) to (8), inclusive, being printed on pages 24 and 25, are omitted in printing this schedule. JOHN G. STETSON, *Clerk.*]

(9)

C. D. (11) 196. Day Nathan B. lawyer, 350 Tremont bldg. h. 280 Newbury
D. D. 567. Day Nathan B. lawyer, 350 Tremont bldg. res. 280 Newbury

(10)

C. D. (12) 524. Diserens Ralph F. salesman, 156 Oliver, h. 105 Glenway, Dor.
D. D. 590. Diserens Ralph F. salesman, 156 Oliver, res. 105 Glenway, Dor.

(11)

C. D. (18) 710. Gardiner Charles A. asst. assessor, bds. 56 Burnett, J. P.
D. D. 30*. Gardiner Charles A. asst. assessor, res. 56 Burnett, J. P.

(12)

C. D. (18) 712. Garfield Frank I. civil engineer, h. 159 Bellevue av. Ros.
D. D. 31*. Garfield Frank I. civil engineer, res. 159 Bellevue av. Ros.

(13)

C. D. (20) 765. Graham Peter, physician, 9 Malden, rms. do.
D. D. 78*. Graham Peter, physician, 9 Malden, res. do.

(14)

C. D. (20) 792. Habelow Louis, real estate, h. 22 Willard
D. D. 721. Habelow Louis, real estate, res. 22 Willard

(15)

C. D. (20) 792. Habelow Michael, hostler, h. 22 Willard
D. D. 721. Habelow Michael, hostler, res. 22 Willard

(16)

C. D. (21) 797. Hale Joseph, clerk, rms. 54 Myrtle
D. D. 725. Hale Joseph, clerk, res. 54 Myrtle

(17)

C. D. (21) 817. Harbolow Louis, real estate, h. 69 Lowell
D. D. 742. Harbolow Louis, real estate, res. 69 Lowell

(18)

C. D (21) 833. Hartmann Arnold, clerk, 43 South, h. 26 Corona, Dor.
D. D. 756. Hartmann Arnold, clerk, 43 South, res. 26 Corona, Dor.

(19)

C. D. (22) 855. Hedderwick Maitland, china decorator, 38 Portland, h. 88 Myrtle
D. D. 775. Hedderwick Maitland, china decorator, 38 Portland, res. 88 Myrtle

(20)

C. D. (24) 905. Horstmeier Albert W. A. artist, 711 Boylston, h. do.
D. D. 820. Horstmeier Albert W. A. artist, 711 Boylston, res. do.

(21)

C. D. (24) 945. Jacobs Blanche S. teacher, h. 47 Vermont, W. R.
D. D. 853. Jacobs Blanche S. teacher, res. 47 Vermont, W. R.

(22)

C. D. (26) 962. Johnson Nathan H. packer, 111 Beach, bds. at Everett
D. D. 867. Johnson Nathan H. packer, 111 Beach, res. at Everett

(23)

C. D. (32) 1098. Lloyd Harry K. designer, 144 Essex, h. 17 Malvern, Dor.
D. D. 966. Lloyd Harry K. designer, 144 Essex, res. 17 Malvern, Dor.

(24)

C. D. (32) 11 04. Long A. E. & Son (George W.) undertakers, 644 Warren, Rox. h. at Cambridge
D. D. 971. Long A. E. & Son (George W.) undertaker, 644 Warren, Rox. res. at Camb.

(25)

C. D. (32) 1104. Long George W. (A. E. Long & Son) undertaker, 644 Warren, Rox. h. do.
D. D. 971. Long George W. (A. E. Long & Sons) undertaker, 644 Warren, Rox. res. do.

(26)

C. D. (34) 1168. Martin Albert P. treas. 132 Lincoln, h. at Milton
D. D. 1033. Martin Albert P. treas. 132 Lincoln, res. at Milton

(27)

C. D. (36) 1203. McDaniel Allen B. draughtsman, 101 Tremont, rm. 913, bds. 21 Edson, Dor.

D. D. 1069. McDaniel Allen B. draughtsman, 101 Tremont, rm. 913, res. 21 Edson, Dor.

(28)

C. D. (37) 1231. McKenna John, teamster, 116 Tremont, h. 16 Stone, Chsn.

D. D. 1095. McKenna John, teamster, 116 Tremont, res. 16 Stone, Chsn.

(29)

C. D. (38) 1258. Meehan William, 15 N. Grove, h. 130 Leverett

D. D. 1122. Meehan William, 15 N. Grove, res. 130 Leverett

(30)

C. D. (40) 1335. Murray Aubrey R. clerk, 111 Chauncey, bds. 3 Stamford pl.

D. D. 1191. Murray Aubrey R. clerk, 111 Chauncey, res. 3 Stamford pl.

(31)

C. D. (42) 1367. Nolte Julius E. draughtsman, 101 Tremont, rm. 913, bds. 803 Centre, J. P.

D. D. 1225. Nolte Julius E. draughtsman, 101 Tremont, rm. 913, res. 803 Centre, J. P.

(32)

C. D. (44) 1413. Owen Thomas C. clerk, 111 Causeway, rms. 5 Allston

D. D. 1269. Owen Thomas C. clerk, 111 Causeway, res. 5 Allston

(33)

C. D. (45) 1439. Peckham David R. conductor, N. Y., N. H. & H. R. R. h. 37 Saxton, Dor.

D. D. 1139. Peckham David R. conductor, N. H. & H. R. R. res. 37 Saxton, Dor.

(34)

C. D. (46) 1460. Pierce Edwin E. clerk, B. & M. R. R. H. T. D., Water, Chsn. rms. 30 Winthrop, do.

D. D. 1312. Pierce Edwin E. clerk, B. &. M. R. R. H. T. D., Water, Chsn. res. 30 Winthrop, do.

(35)

C. D. (50) 1562. Rollins George R. stable, 71 Trenton, E. B. h. at Chelsea

D. D. 1406. Rollins George R. stable, 71 Trenton, E. B. res. at Chelsea

(36)

C. D. (50) 1562. Rollinson Merle L. telegrapher, B. & A. R. R. E. B. bds. at Winthrop

D. D. 1406. Rollinson Merle L. telegrapher, B. & A. R. R. E. B. res. at Winthrop

(37)

C. D. (51) 1585. Ryan Thomas J. porter, Adams Express, South sta. h. 270 W. Broadway, S. B.

D. D. 1428. Ryan Thomas J. porter, Adams Express, South sta. res. 270 W. Broadway, S. B.

(38)

C. D. (54) 1668. Smith Frank W. horse shoer, 274 Dover, bds. Hotel Clarendon

D. D. 1506. Smith Frank W. horse shoer, 274 Dover, res. Hotel Clarendon

(39)

C. D. (55) 1676. Smith Roxie A. nurse, bds. 29 Boylston av. J. P.

D. D. 1514. Smith Roxie A. nurse, res. 29 Boylston av. J. P.

(40)

C. D. (56) 1717. Stockwell Howard A. clerk, 30 Eustice, Rox. bds. 1 Leslie pk. do.

D. D. 1551. Stockwell Howard A. clerk, 30 Eustice, Rox. res. 1 Leslie park, do.

(41)

C. D. (60) 1833. Wallberg Anna C. Boston Literary Bureau, 8 Dalton, h. do.

D. D. 58**. Wallberg Anna C. Boston Literary Bureau, 8 Dalton, res. do.

(42)

C. D. (60) 1840. Ward Daniel E. clerk, 121 Beach, h. 55 Saxton, Dor.

D. D. 65**. Ward Daniel E. clerk, 121 Beach, res. 55 Saxton, Dor.

(43)

C. D. (62) 1885. White William, electrician, 100 High, bds. 44 Sterling, Rox.

D. D. 104**. White William, electrician, 100 High, res. 44 Sterling, Rox.

(44)

C. D. (62) 1886. Whitehouse Louis A. draughtsman, 221 Columbus av. h. 1 Monmouth, E. B.

D. D. 105**. Whitehouse Louis A. draughtsman, res. 1 Monmouth E. B.

(45)

C. D. (62) 1893. Wiggin Henry D. jr. clerk, 95 Milk, rm. 26, bds. at Medford

D. D. 111**. Wiggin Henry D. jr. clerk, 95 Milk, rm. 26, res. at Medford

(46)

C. D. (63) 1917. Wise John H. salesman, 41 Sudbury, h. 577 Tremont

D. D. 132**. Wise John H. salesman, 41 Sudbury, res. 577 Tremont

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MASTER'S SCHEDULE E, Finding 11.

Errors Copied from Complainant's Copyrighted Directory into Defendant's Directory.

[Memorandum. Instances of errors copied from complainant's directory into defendant's directory (1) to (8), inclusive, being printed on pages 25 and 26, are omitted in printing this schedule. John G. Stetson, *Clerk.*]

(9)

C. D. (20) 789. Guild Willard G. clerk, 43 Temple pl. h. 17 Wait, Rox.
D. D. 98. Guild Willard G. clerk, 43 Temple pl. res. 17 Wait, Rox.
" " Guild Willis G. apotheeary, res. 17 Wait, Rox.

(10)

C. D. (21) 816. Hansom Alfred, clerk, Fourth National Bank
D. D. 740. Hansom Alfred, clerk, Fourth Nat. Bank
" " Hansen Alfred, messenger, Fourth Nat. Bank, Board of Trade bldg. res. 162 Pleasant, Dor.

(11)

C. D. (21) 821. Harlow George H. clerk, 11 N. F. H. mkt.
D. D. 746. Harlow George H. clerk, 11 New F. H. mkt.
" " Harlow George W. salesman, 11 New F. H. mkt. res. 454 Mass. av.

(12)

C. D. (22) 852. Healy Canton Express, 14 Devonshire
D. D. 773. Healy Canton Express, 14 Devonshire
" 772. Healey Canton Exp. 14 Devonshire

(13)

C. D. (23) 867. Hesenius Martin, salesman, 69 Bedford, h. 21 Atherton pl. Rox.
D. D. 786. Hesenius Martin, salesman, 69 Bedford, res. 21 Atherton pl. Rox.
" 759. Hasenfuss Martin, salesman, 69 Bedford, res. 5 Atherton pl. Rox.

(14)

C. D. (23) 868. Hewitt Alfred A. restaurant, 135 Dartmouth, h. 130 do.
D. D. 787. Hewitt Alfred A. restaurant, 135 Dartmouth, res. 130 do.
" 186. Hewett Alfred A. restaurant, 133 Dartmouth, res. 130 do.

(15)

C. D. (23) 872. Hiegle Joseph, baker, 30 Marshfield, Rox. h. do.
D. D. 799. Hiegle Joseph, baker, 30 Marshfield, Rox. res. do.
" 832. Huegel Joseph, bakery, 30 Marshfield, Rox. res. do.

(16)

C. D. (24) 905. Horrigan David, fireman, 53 State, h. at Everett
D. D. 820. Horrigan David, fireman, 53 State, res. at Everett
" 823. Hourigan David, day fireman, 53 State.

(17)

C. D. (29) 1035. Knub Christian, painter, 25 Gurney, Rox. h. 56 Delle av. do.
D. D. 912r. Knub Christian, painter, 25 Gurney, Rox. res. 56 Delle av. do.
" 443. Christiensen Knud, painter, 25 Gurney, Rox. res. 56 Delle av.

(18)

C. D. (32) 1101. Lockney Thomas H. supt. 450 Wash. bds. 58 Burrell, Rox.
D. D. 968. Lockney Thomas H. supt. 450 Wash. res. 58 Burrell, Rox.
" " Lockney Thomas F. supt. 450 Wash. res. 58 Burrell, Rox.

(19)

C. D. (33) 1132. Macheum James, clerk, 75 Clinton, h. 37 Callender. Dor.
D. D. 998. Machum James, S. clerk, 75 Clinton, res. 37 Callendar, Dor.
" " Macheum James, clerk, 75 Clinton, res. 37 Callender, Dor.

(20)

C. D. (37) 1251. McPartland George A. clerk, Hotel Cecil, bds. do.
" 1115. McPartland George A. clerk, Hotel Cecil, res. do.
" " McPartlin George A. clerk, Hotel Cecil, res. do.

(21)

C. D. (37) 1253. McRae John, engineer, 13 Richmond, h. 103 Rosseter Dor.
D. D. 1117. McRae John, engineer, 13 Richmond, res. 103 Rosseter, Dor.
" 1002. MacRae John, engineer, 41 Richmond, res. 103 Rosseter, Dor.

(22)

C. D. (42) 1377. Nutter Ira W. clerk, B. & M. R. R., E. B. h. 9 Saratoga, do.
D. D. 1234. Nutter Ira W. clerk, B. & M. R. R., E. B. res. 9 Saratoga, do.
" " Nutter Harry W. clerk, B. & M. R. R., E. B. res. 9 Saratoga, do.

(23)

C. D. (43) 1395. Ohrenberger Charles E. clerk, 1270 Dorchester av. Dor. bds. 609 River, Mat.
D. D. 1252. Ohrenberger Charles E. clerk, 1270 Dorchester av. Dor. res. 609 River, Mat.
" 1253. Ohrenberger Charles F. mfg. chemist, res. 609 River, Mat.

(24)

C. D. (44) 1431. Patrio Albert E. cashier, Adams House, h. 40 Norway
D. D. 1284. Patrio Albert E. cashier, Adams House, res. 40 Norway
" " Patno Albert E. cashier, res. 40 Norway

(25)

C. D. (47) 1481. Powers Thomas, clerk, 107 Washington, h. 21 Harvard pl. Chsn.
D. D. 1330. Powers Thomas, clerk, 107 Wash. res. 21 Harvard place, Chsn.
D. D. " Powers Thomas A. clerk, 107 Wash. res. 21 Harvard square, Chsn.

(26)

C. D. (49) 1533. Richardson Earl B. clerk, First National Bank, h. at Winchester
D. D. 1379. Richardson Earl B. clerk, First National Bank, 53 State, res. at Winchester
" 1380. Richardson H. Earle, bookkeeper, First National Bank, 53 State, res. at Winchester

(27)

C. D. (50) 1551. Robinson Burton H. clerk, 96 Federal, res. at Newton Centre
D. D. 1396. Robinson Burton H. clerk, 96 Federal res. at Newton Centre
" 1394. Robertson Burton H. clerk, 96 Federal, res. at Newton Centre

(28)

C. D. (51) 1574. Roxbury Edward J. clerk, 863 Harrison av. h. 175 Northampton
D. D. 1417. Roxbury Edward J. clerk, 863 Harrison av. res. 175 Northampton
" " Roxbury John E. mgr. 863 Harrison av. res. 175 Northampton

(29)

C. D. (54) 1647. Side Bros. (Harry and Morris), confectionery, 16 Cross
D. D. 1485. Side Bros. (Harry and Morris), confectionery, 16 Cross
" 1460. Seid Bros. (Morris and Harry), lunch, 16 Cross

(30)

C. D. (54) 1647. Side Harry (Side Bros.), 16 Cross, h. 11 Cotting
D. D. 1485. Side Harry (Side Bros.), 16 Cross, res. 11 Cotting
" 1460. Seid Harry (Seid Bros.) lunch, 16 Cross, res. 16 Stillman

(31)

C. D. (54) 1647. Side Morris (Seid Bros.) 16 Cross, bds. 11 Cotting
D. D. 1485. Side Morris (Seid Bros.) 16 Cross, res. 11 Cotting
" 1460. Seid Morris (Seid Bros.) lunch, 16 Cross, res. 16 Stillman

(32)

C. D. (54) 1697. Stackpole T. F. salesman, 51 Chardon, h. at Somerville
D. D. 1533. Stackpole T. F. salesman, 51 Chardon, res. at Som.
" 1533. Stackpole J. Frank, salesman, 51 Chardon, res. at W. Som.

(33)

C. D. (56) 1710. Stevens Fred, shipper, 172 Mass av. bds. 3555 Washington, J. P.
D. D. 1544. Stevens Fred, shipper, 172 Mass. av. res. 3555 Wash. J. P.
" " Stevens Frederick G. res. 3155 Wash. J. P.

(34)

C. D. (58) 1764. Terrill Frank X. 61 Kilby, h. at Chelsea
D. D. 1595. Terrill Frank X. 61 Kilby, res. at Chelsea
" 13. Tirrell Frank X. 61 Kilby, res. at Chelsea

(35)

C. D. (59)	1797.	Trotman Louis H. salesman, 178 Tremont, rm. 4
D. D.	27.	Trotman Louis H. salesman, 178 Tremont, rm. 4
"	24.	Trautman Lewis H. salesman, 178 Tremont rm. 4 res. 19 Wabeno, Rox.

(36)

C. D. (23)	883.	Hirschman Harry, trimmer, 18 Summer, bds. 124 Union park
D. D.	800.	Hirschman Harry, trimmer, 18 Summer, res. 124 Union pk.
"	800.	Hirshman Harry. clothing trimmer, 18 Summer, res. 124 Union pk. st.

This cause was thence continued to the present October Term, A. D. 1904, when the following Defendant's Exceptions to Master's Report is filed: —

DEFENDANT'S EXCEPTIONS TO MASTER'S REPORT.

[Filed November 12, 1904.]

And now comes the respondent in the above-entitled cause, and makes and files the following exceptions to the Master's Report:

(1) The respondent excepts to so much of the Master's Finding 6 as finds that agents and employés of respondent failed to make the verification therein referred to.

(2) The respondent excepts to Master's Finding 7 in so far as it finds that an actual verification from original sources of information was impossible or was not made.

(3) The respondent excepts to so much of Master's Finding 8 as finds that seven (7) of the persons therein mentioned had moved before the respondent commenced its canvass.

(4) The respondent excepts to Master's Finding 9.

(5) The respondent excepts to Master's Finding 10, and particularly to the part thereof which finds that an actual verification was impossible, and to that part which finds that the persons whose names are therein mentioned had moved prior to July 12, 1903, or July 1, 1903, or the time when attempted verifications were made.

(6) The respondent excepts to Master's Finding 11 that the names of persons and information connected therewith are inserted in two forms.

(7) The respondent excepts to so much of Master's Finding 14 as finds that the correct residence of the person there mentioned is 31 Sumner Street, Dorchester.

(8) The respondent excepts to so much of Master's Finding 15 (1) as finds that the two names there mentioned are intended for the same person.

(9) The respondent excepts to so much of Master's Finding 15 (2) as finds that the two names therein mentioned are intended to refer to the same person.

(10) The respondent excepts to so much of the Master's Finding 15 (4) as finds the time of removal.

(11) The respondent excepts to so much of Master's Finding 15 (5) as finds that the three entries there quoted are intended to refer to the same person.

(12) The respondent excepts to so much of Master's Finding 15 (7) as finds that the person therein mentioned had moved before the respondent's canvass.

(13) The respondent excepts to so much of Master's Finding 15 (8) as finds that the two names there mentioned intended to refer to the same person.

(14) The respondent excepts to Master's Finding 16.

(15) The respondent excepts to the Master's first conclusion of law.

(16) The respondent excepts to the Master's second conclusion of law.

(17) The respondent excepts to the ruling of the Master admitting in evidence hearsay statements as to what was or was not correct information.

(18) The respondent excepts to the rulings of the Master admitting in evidence hearsay statements as to dates of removal.

(19) The respondent excepts to the rulings of the Master

admitting in evidence hearsay statements as to the fact of removal.

(20) The respondent excepts to the rulings of the Master declining to strike out hearsay statements as to what was or was not correct information as to the date of removal, and as to the fact of removal after they had been admitted.

(21) The respondent excepts to the refusal of the Master to make the findings requested by it hereto attached.

(22) The respondent excepts to the failure of the Master to make the rulings of law requested by it and hereto attached.

(23) The respondent makes again and insists upon the exceptions taken by him in the course of the trial as shown by the record.

(24) That the Master has failed to make any finding as to the amount of damage suffered by the complainant through the alleged infringement.

(25) That the Master has failed to make any finding as to whether any damage alleged to be suffered by the complainant is either serious or irreparable.

(26) That the Master has failed to make any finding as to whether the injury done to the respondent by an injunction would be disproportionate to the benefit derived by the complainant.

(27) That the Master has failed to make any finding as to the number of copies of the complainant's copyrighted book which remained in existence, or could be sold at the time of the alleged infringement, or at the time of the hearing.

(28) That the Master has failed to make any finding as to the good faith of the respondent corporation or its officers.

By its Solicitors,

GASTON, SNOW & SALTONSTALL.

On the fourteenth day of November, A. D. 1904, the following Complainant's Exceptions to Master's Report is filed: —

COMPLAINANT'S EXCEPTIONS TO MASTER'S REPORT.

[Filed November 14, 1904.]

1. It excepts to the ruling of the Master in "Master's Note 25", that a compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call.

2. It excepts to the ruling of the Master in "Master's Note 26", that "One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct."

3. It excepts to the ruling of the Master in "Master's Note 27", that "the right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when this investigation shows they should be changed, to correspond with the facts, and checking them as correct when they prove to be correct".

4. It excepts to the failure of the Master to find as a conclusion of law (see Master's Note 45) that from the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied numerous names of persons occurring in the complainant's directory, but deceased, or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant from using, selling, or offer-

ing for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

By its Attorney,

ALEX. P. BROWNE.

On the seventeenth day of January, A. D. 1905, the cause is set down for hearing and fully heard by the Court on exceptions to master's report, the Honorable Clarence Hale, District Judge as aforesaid, sitting.

On the second day of February, A. D. 1905, the Opinion of the Court is announced overruling the exceptions to the master's report, and on the twentieth day of February, A. D. 1905, the following Final Decree is entered in accordance with said opinion:—

FINAL DECREE.

FEBRUARY 20, 1905.

This cause came on to be heard at the October Term, 1904, upon the exceptions to the master's report, and was argued by counsel for the respective parties; and now upon consideration thereof, to wit: February 20, 1905, It is ordered, adjudged and decreed, as follows, to wit: that the exceptions to the master's report are overruled and the master's report is confirmed.

And It is further ordered, adjudged and decreed that a perpetual injunction be issued against the defendant according to the opinion of this Court, filed February 2, 1905, herein.

It is further ordered, adjudged and decreed that the complainant recover of the defendant its costs of suit, but no damages or profits, the recovery of the same having been duly waived by written waiver filed in this cause by complainant herein.

By the Court,

BENJ. H. BRADLEE, *Deputy Clerk.*

From the final decree the complainant claims an appeal to the United States Circuit Court Court of Appeals for the First Circuit and gives good and sufficient security that it will prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, and said appeal is allowed accordingly.

A true record:

Attest: ALEX. H. TROWBRIDGE, *Clerk.*

OPINION OF THE CIRCUIT COURT.

FEBRUARY 2, 1905.

HALE, J. This cause has already been before the court in the matter of a preliminary injunction (129 Fed. 761). We made an interlocutory decree for a temporary injunction unless the defendant before a certain time should file a bond to the complainant in the sum of five thousand dollars, with sureties approved by the clerk, conditioned for the payment of any sum, except costs, which might be finally decreed against the defendant in this court, or on appeal. The court further decreed that the defendant keep an account of sales of directories made by it. After the above decree, the cause again came before this court on May 17, 1904, and, under the practice in such cases, it was referred to John G. Stetson, as Master, upon the bill, answer and replication, to find the facts, and report to the court his findings of fact, his conclusions of law, and such portions of the evidence as either party might request, or as he might deem useful to the court. The Master has filed a complete report, which now forms the basis of action for the court. That report, omitting the introductory portion and schedules not material to be now considered, is as follows:

[MEMORANDUM. The Master's complete report is already printed in this record, pages 9 to 53, inclusive. The introductory portion omitted is Abbreviations and Definitions, printed pages 9 and 10. The schedules omitted are Master's Schedules A, B, C, D and E, printed pages 21 to 26 and 44 to 53. By

direction of counsel for appellant, I do not reprint the master's report as it is incorporated in this opinion. JOHN G. STETSON, *Clerk.*]

To the above report the complainant filed the following exceptions:

1. It excepts to the ruling of the Master in "Master's Note 25", that "a compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call".

2. It excepts to the ruling of the Master in "Master's Note 26", that "one who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct".

3. It excepts to the ruling of the Master in "Master's Note 27", that "the right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows they should be changed to correspond with the facts, and checking them as correct when they prove to be correct".

4. It excepts to the failure of the Master to find as a conclusion of law (see Master's Note 45) that "from the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied numerous names of persons occurring in the complainant's directory, but deceased or removed before the time of defendant's canvass, the complainant is entitled

to an injunction against the defendant from using, selling or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston".

The defendant also filed certain exceptions, but, upon hearing, argued only, *first*, an exception in reference to the right to drawing questions, and *second*, an exception urging that the Master ought to have made a finding that the plaintiff should affirmatively show damages before he is entitled to any injunction. Defendant's other exceptions were not pressed at the hearing, and need not be referred to.

(*After stating the case*) This cause has already been before the court upon the question of preliminary injunction, 129 Fed. 761. After action had been taken on that question, the case came before us upon bill, answer and replication, and, under the practice of the court in such cases, was referred to John G. Stetson, as Master, to hear the evidence, find the facts, and report to the court his findings of fact, his conclusions of law, and such portions of the evidence as either party might request, or as he might deem useful for the court. The Master has fully heard the parties and has filed his report, which clearly presents the whole matter for our consideration. The leading and vital contention of the complainant is that the Master made an error in ruling that "one who is compiling a general directory of a city has the right to make his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found and changing what his investigation shows should be changed, and printing, without change, what he has, by means of his own investigation, found to be correct". In our former decision we found it necessary to refer to this subject, and to discuss it briefly. We stated the leading English authorities and the cases presenting the conclusions of the Federal courts of this country; we referred to the late cases: *The Thompson Co.* v. *American Law Book*

Co., 122 Fed. 922, and *Dun* v. *International Mercantile Agency*, 127 Fed. 173. We then said: "It seems to us that there is strong reason for holding that the publisher of a new directory has a right to take an old directory and be guided by it to original sources of information, and that, if, so guided, he goes to those sources of information and obtains facts, he may publish those facts, even though they consist of names and addresses which are identical with those published by the old directory. But upon this motion for a temporary injunction it is not necessary nor fitting for the court to pass upon this question."

As the case now comes before the court it is necessary to pass upon the question. We see no reason for coming to a different conclusion from that suggested in our former opinion. The American cases which we have just cited contain the latest expression of the Federal courts upon the subject, and must control our action. The learned counsel for the complainant has presented a very able argument, insisting that the court should not allow the compiler of a directory to verify his own work by a former directory; that he should not be permitted to go to the original sources pointed out by the former directory and, after verifying the statement of the former directory, then to publish the names and addresses, if they are identical with those published in a former directory. But the action which we indicated in our former opinion amounts to something more than mere verification. For example, let us suppose that in July a publisher is obtaining information upon which he proposes to publish a directory. He takes an old directory which had been compiled the preceding January; in that directory it appears that John Smith was, in January, a lawyer at No. 1 Tremont Street. With the information contained in the January directory, the compiler of the July directory goes to No. 1 Tremont Street on July first, and finds that John Smith is a lawyer, that he has at that date an office at No. 1 Tremont Street. The directory maker has a right to publish this information in his July directory; he cannot be

precluded from so publishing it by the fact that the maker of the January directory has stated that the same facts existed in the preceding January. The maker of the January directory may or may not have stated the truth as to John Smith at that time; but the compiler of the July directory may, in his directory, state the facts as they exist on July first, relating to John Smith, whether those same facts existed or not the previous January, and whether they were stated or not in the January directory. The compiler of the July directory is not merely verifying and quoting; he is obtaining facts from original sources, using the old directory only to guide him to these sources. Facts so obtained he may publish in his compilation; he cannot be prevented from such publication by the fact that the same things were true in January, and were stated by a former compiler.

In reference to the exceptions raised by the defendant, we have already considered the subject of the first exception in our opinion; in reference to the second exception, we sustain the findings of the Master.

We overrule the exceptions of both parties to the report of the Master and confirm his findings of fact and conclusions of law.

The learned counsel for complainant requests that the court decree a general injunction with liberty for the defendant to have the injunction removed when he shall have expunged certain offending matter; he bases this request upon the decree in *Social Register Association* v. *Murphy*, 128 Fed. 116; but in that case the court found that as to portions of the book at issue certain material of the complainant and defendant were so blended that a separation was impractical, and on this ground made the injunction general. We prefer to order a specific injunction in accordance with the details indicated in the findings of the Master.

A decree may therefore be entered that there be:

First: An injunction against the defendant from using or

selling, or offering for sale, any copy of its 1904 City Directory of Boston so long as it contains

(1) in its list of Office Buildings, Halls, etc., on page 173, the name and location McKinley Hall, 24 W. Concord Street.,

(2) in its general directory the names and information connected therewith set out in Master's Findings 7, 8, 9, 10, 11 and 14.

(3) in its general directory the names and the information referred to in Master's Findings as not front-checked in the check books and so not obtained by original canvass, and not blue-dotted and so not obtained from original sources upon questions drawn, but which are not included in Master's Schedule C, and

(4) in its business directory the fictitious names and locations, Rogers, Robert L., 312 Maverick, on page 1969, and Jones, G. W., 1650 Dorchester Av. on page 2151, and the sixteen (16) names and information in the form described in Master's Findings 15 and 15A.

SECOND: That there be an accounting to the complainant for profits derived by the defendant from, and by reason of, its incorporating in its 1904 City Directory of Boston the names and information specified above in paragraphs (1), (2), (3 and (4), and from the manufacture and sale of said directory in so far as such profits are attributable to such incorporating therein of said names and information.

CLAIM OF APPEAL AND ASSIGNMENT OF ERRORS.

[FILED FEBRUARY 27, 1905.]

And now comes the complainant and claims an appeal in this suit and assigns therefor the following errors, viz.,

FIRST: That the Court erred in sustaining the following ruling of the Master herein:

"A compiler of a general directory has the right to use a prior general directory both to verify the results of his own work, and to show him, and direct him to, the persons upon whom it may be worth his while to call."

SECOND: That the Court erred in sustaining the following ruling of the Master:

"One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct."

THIRD: The Court erred in sustaining the following ruling of the Master:

"The right to do as above stated is not lost by reason of the fact that a person in going to the sources of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows that they should be changed to correspond with the facts, and checking them as correct when they prove to be correct."

FOURTH: That the Court erred in sustaining the following ruling of the Master:

"From the fact that the defendant has copied the three trap names hereinbefore mentioned in the Master's Findings 12 and 13, and has copied numerous errors occurring throughout the complainant's directory, and has copied numerous names of persons occurring in the complainant's directory, but deceased or removed before the time of defendant's canvass, the complainant is entitled to an injunction against the defendant, from using, selling, or offering for sale, or otherwise disposing of, or offering to dispose of, any copy of defendant's 1904 City Directory of Boston.

NOTE. This conclusion is based upon the assumption that whereas the defendant's witnesses have testified that in every case where information was not obtained by original canvass it was obtained by verification of matter copied from complainant's book, yet it appearing that in these isolated and widely

separated instances such was not the fact, there is ground for finding that in no case was the matter copied from complainant's book verified, but that all matter so copied was printed as copied, without verification. If this be found, the matter so printed forming a large portion of the defendant's entire book, and not being readily distinguishable from the rest, the defendant, having wrongfully mixed the matter of another with his own, must suffer the consequences.

[MASTER'S NOTE 45. I decline to report a conclusion of law in the form above suggested by Mr. Browne. I have found as facts, substantially, that the defendant copied into his directory from complainant's copyrighted directory the three trap names mentioned in Master's Findings 12 and 13, and has so copied the errors specified in Master's Findings 7, 8, 10, 11, 14, 15, and 5A, and the errors referred to in Master's Finding 9. I amend my first conclusion of law on page 12 by substituting for the words 'Master's Finding 15', at the end of paragraph (4), the words 'Master's Findings 15 and 15A', and, as thus amended, I confirm my said first conclusions of law.] "

FIFTH: That the Court erred in confirming the following ruling of the Master:

"The complainant is entitled to an injunction against the defendant from using or selling or offering for sale any copy of its 1904 City Directory of Boston so long as it contains

(1) in its list of Office Buildings, Halls, etc., on page 173, the name and location McKinley Hall, 24 West Concord St.,

(2) in its general directory the names and information connected therewith set out in Master's Findings 7, 8, 9, 10, 11, and 14.

(3) in its general directory the names and the information referred to in Master's Finding 9 as not front-checked in the check-books and so not obtained by original canvass, and not blue-dotted, and so not obtained from original sources upon questions drawn, but which are not included in Master's Schedule C, and

(4) in its business directory the fictitious names and locations, Rogers, Robert L., 312 Maverick, on page 1969, and Jones, G. W., 1650 Dorchester Av., on page 2151, and the sixteen (16) names and information in the form described in Master's Findings 15 and 15 A."

SIXTH: That the Court erred in refusing to grant a general injunction against the defendant with opportunity to the defendant to apply for a modification thereof when all matters

copied from the complainant's work shall have been expunged from the defendant's work.

SEVENTH: That the Court erred in finding that the compiler of a general directory of a city has a right to copy a part of the names and addresses contained in another copyrighted general directory, and to use the names so copied in the preparation of such other directory.

SAMPSON & MURDOCK COMPANY,
by ALEX. P. BROWNE,
Solicitor and of Counsel.

CITATION ON APPEAL.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES,

To the SEAVER-RADFORD COMPANY, *a corporation organized under the general laws of the State of Massachusetts, and having its usual place of business at Boston in said State and District,* GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the twenty-fifth day of March next, pursuant to an appeal duly obtained from a decree of the Circuit Court of the United States for the District of Massachusetts, wherein the Sampson & Murdock Company, a corporation organized under the general laws of the State of Rhode Island, is appellant, and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Clarence Hale, Judge of the District Court of the United States for the District of Maine, duly assigned to hold said Circuit Court, this twenty-seventh day of February, in the year of our Lord, one thousand nine hundred and five.

CLARENCE HALE,
U. S. District Judge.

ACKNOWLEDGMENT OF SERVICE ON CITATION.

March 21, 1905.

Service of the within citation on the within-named Seaver-Radford Company is hereby acknowledged and accepted.

Gaston, Snow & Saltonstall,
Attorneys for Seaver-Radford Company.

CLERK'S CERTIFICATE.

United States of America,
District of Massachusetts, ss.

I, Alexander H. Trowbridge, Clerk of the Circuit Court of the United States for the District of Massachusetts, within the First Circuit, certify that the foregoing is a true copy of the record in the cause in equity, entitled,

No. 1937,
SAMPSON & MURDOCK COMPANY, Complainant,
v.
SEAVER-RADFORD COMPANY, Defendant,

in said Circuit Court determined, the Opinion of the Circuit Court of February 2, 1905, the Prayer for Appeal and Assignment of Errors, and also the original Citation issued upon the appeal of the complainant in said cause, with the Acknowledgment of Service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at Boston, in said District, this twenty-fifth day of March, A. D. 1905.

[seal] ALEX. H. TROWBRIDGE, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

IN EQUITY.

OCTOBER TERM, 1904.

No. 583.

SAMPSON & MURDOCK COMPANY,
COMPLAINANT, APPELLANT,

V.

SEAVER-RADFORD COMPANY,
DEFENDANT, APPELLEE.

BRIEF FOR COMPLAINANT, APPELLANT.

SAMUEL J. ELDER,
ALEX. P. BROWNE,
of Counsel for Complainant, Appellant.

BOSTON:
L. H. LANE, LAW PRINTER,
97 OLIVER STREET,
1905.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIRST CIRCUIT.

IN EQUITY.

OCTOBER TERM, 1904.

No. 583.

SAMPSON & MURDOCK COMPANY, Complainant, Appellant,

v.

SEAVER-RADFORD COMPANY, Defendant, Appellee.

BRIEF FOR COMPLAINANT, APPELLANT.

STATEMENT OF THE CASE.

This case is a suit in equity for infringement of copyright in complainant's well known Boston directory, by a directory entitled "City Directory of Boston", published by the defendant for the first time in the year 1904.

In the lower court, upon a motion for preliminary injunction, the case was referred to Frederic Dodge, Esq., Master, who reported favorably to the complainant. Subsequently, the defendant offering a bond, the injunction order was stayed.

The case was then referred to John G. Stetson, Esq., as Master, to take evidence and report findings for the final hearing by the court.

It was found by each of the two learned Masters that there had been actual and substantial copying by the defendant of the complainant's book, upon the basis of which the injunction was made permanent. It was further found, in like manner, that in addition to such copying the following use had been made of complainant's work by defendant:

After the defendant's original canvass had been made, the pages of the complainant's work were taken one by one, and upon each page

the names and information not obtained by the defendant in its canvass were marked with a check-mark.

Subsequently, the names and information so marked, being several thousand in number, were copied verbatim, each upon a separate slip of paper, and these slips were sent out for verification at the address given. This work seems to have been inaccurately done, because, as appears from Schedules A and D, and other portions of the Master's report, the so-called verification failed to disclose the fact in various instances that the man had died since the complainant's directory was canvassed; in others, that he had removed, and in still others, that no such man or business ever existed, the erroneous information having been intentionally inserted in complainant's book for the sake of detecting fraudulent copying.

Before each learned Master it was urged on behalf of complainant that such checking, copying and verifying was in violation of the copyright law and should be enjoined as being an unfair use of complainant's copyrighted work. The complainant's view was sustained by Mr. Dodge, but the accuracy of this ruling was subsequently questioned by his Honor Judge Hale, in his opinion, reported 129 Fed. Rep. 761, when ordering a preliminary injunction on the ground of actual copying.

Later, upon the reference to Mr. Stetson, while actual and substantial copying was again found by him, he took a contrary view with reference to the practice of checking and verifying above referred to.

Upon the case coming again before Judge Hale for final determination, Mr. Stetson's ruling, affirming the right of the defendant to check, copy and verify, was sustained, and the main question presented upon this appeal is as to the correctness of such ruling. The complainant has another objection to the ruling of the court below as to the nature of the relief ordered, which will be discussed later.

FIRST OBJECTION.

The present case raises clearly, and as is believed for the first time in a court of the United States, a very important question in the law relating to the preparation of directories.

It is a case of the utmost importance to the whole profession of

directory-makers throughout the United States, and its decision will seriously involve the security of the very large sums now invested in the various city and other directories in the United States.

The question of law is stated by Mr. Stetson, the Master in this case, substantially as follows:

The compiler of a general directory of a city has the right to take a part of the names and addresses contained in another general directory, investigate such names and addresses, ascertain how far the existing facts agree with the statements copied, and then to print and publish the results as his own, abandoning what is not found, changing what his investigations show should be changed, and printing, without change, what he has, by means of his own investigation, found to be correct.

This statement of the law was adopted by his Honor Judge Hale, in the opinion from which the present appeal is taken.

Mr. Dodge, the other Master in the case, reached a contrary conclusion, his view being substantially that the compiler of a later directory has no right to copy information contained in the earlier copyrighted directory, whether he verifies it or not.

Before taking up the legal questions involved it seems well to consider, first, what a city directory is, how it is made, and wherein its value lies, both to the owner of the copyright and the buyer of the copyrighted book.

The intellectual labor involved in producing a city directory may be broadly divided into two general classes. There is first what is commonly called canvassing. This is intellectual labor of a comparatively low order. Accuracy in observing and in noting the results of such observation is the principal talent involved.

There is, however, another and a higher field of intellectual work which must be added to the work of the canvasser, to produce the publication in such final and authoritative form as we are accustomed to demand in a directory of a great city. This is the editorial work, so called.

As applied to the item "John Smith, laborer", such work may be of the slightest, but as applied to the proper title of an official of a company, the proper designation of a man's employment where he

has several, in short, the determination of the many questions of doubt, of greater or less importance, which it is obvious must arise, there is involved the exercise of intelligence of a high order. Just in proportion as this intelligence is exercised, will the resulting directory be as a whole good, indifferent, or bad.

It is this result of excellence, due both to the accuracy of canvass and quality of editorial work, which the copyright is supposed to extend to and protect.

THE QUESTION INVOLVED.

The proposition contended for by the defendants and accepted by the court below is, and must logically be, that any person desiring to publish a rival directory has the right to copy from the previously copyrighted directory substantially all that it contains, provided that the copier subsequently verifies the accuracy of the information.

If some twenty thousand names, as in the present case, may be copied, then in the case of a still more inaccurate original canvass a still larger number may be taken, and so on according to the inaccuracy of the original work done.

We concede that the later compiler may lawfully use the earlier work in certain ways in order to ascertain whether his own work is complete. A later part of the brief deals with this question.

In the present case the Master has found a substantial and material transfer of names and other information sufficient to warrant the general ruling by him now complained of.

THE PRIOR DECISIONS.

Up to the year 1903, it was conceded and well established law, as set forth by the decisions of courts of high authority both in this country and in England, that the copying, verifying and reprinting of copyrighted directory information was an infringement of copyright.

Banks v. *McDevitt*, 13 Blatch. 163.
List v. *Keller*, 30 Fed. Rep. 772.
Williams v. *Smythe*, 110 Fed. Rep. 961.
Kelly v. *Morris*, L. R. 1 Eq. 697.

Morris v. *Ashbee*, L. R. 7 Eq. 34.
Morris v. *Wright*, L. R. 5 Ch. 279.

Such would be the unquestioned rule today, as we submit, had it not been for the action of the United States Circuit Court of Appeals for the Second Circuit in reversing, in the case of *Edward Thompson* v. *American Law Book Co.*, 122 Fed. Rep. 922, the decision of Judge Lacombe ordering a preliminary injunction in the case of a law book. It is to be noticed that this case had nothing to do with directories, and if the report be carefully examined, it will be found that it has no bearing upon the subject of directory copyright infringement.

In the course of its opinion the Court of Appeals incorrectly cites the English case of *Moffatt* v. *Gill*, not a directory case, as follows:

> "In speaking of cases relating to directories the court says 'You cannot, where another man has compiled a directory, simply take his sheets and reprint them in your own. You are entitled, taking the sheets with you, to go and see whether the existing facts concur with the description in the sheets, and if you do that, you may publish the result as your own.'"

Now this statement by the Court of Appeals is an *error of fact* arising from a careless reading of the report of *Moffatt* v. *Gill*. The language which it quotes is not the language of the court, but the language of counsel in argument.

The case of *Moffatt* v. *Gill* was decided in the lower court in 1901 by Kekewich, J., who said of it in his opinion, reported at 49 Weekly Reporter, 438, 439, and 84 Law Times, 452:

> "This particular case is one of such peculiarity that after all it has to be treated on its own lines. It bears some resemblance to cases respecting dictionaries, ... cases respecting educational works, ... and to cases respecting hand-books and directories, and yet under the circumstances and for the reasons above stated, it is distinguishable from all and stands alone."

On appeal, the case is reported at 86 Law Times, 465, and 50 Weekly Reporter, 528, opinions being rendered by all the members

of the court. Collins, Master of the Rolls, was the only Judge to mention directory cases, which he did in the following language:

> "He [*counsel for defendant*] rather suggested that it was justified by the directory cases, which say that though you cannot, where another man has compiled a directory, simply take his sheets and reprint them as your own, you are entitled to take the sheets with you, to go and see whether the existing facts coincide with the description in the sheets, and if you do, that you may publish it as your own.
>
> "Certainly; but are you at liberty to apply the same principle to a series of quotations?"

Now the fact was that, when counsel *arguendo* made the statement misquoted from *Moffatt* v. *Gill*, it was absolutely unsupported by authority and entirely in contradiction of controlling English decisions upon the specific subject of copying, verifying and publishing copyrighted directory matter.

It is hardly conceivable that the learned Judge intended, offhand, in a case upon an entirely different subject, to overrule the previously carefully considered decisions of two eminent English Vice Chancellors. We submit that this slip of the court in *Moffatt* v. *Gill*, the rankest sort of a dictum, obviously thrown off without consideration, and not officially reported, is no controlling authority whatever upon the subject.

However, within two months after having been reversed by the Court of Appeals as stated, Judge Lacombe in the case of *Colliery Co.* v. *Ewald*, 126 Fed. Rep. 843, after citing the above mentioned misquotation from *Moffatt* v. *Gill*, and speaking of the doctrine therein contained as "most inequitable", "a harsh rule", and one which "if I were to decide upon the original motion here without some stronger authority, I should never follow", held that he was bound by the decision and denied a motion for preliminary injunction.

In his opinion, he does, however, point out with reference to the "harsh rule" in question that it may be "urged that the adoption of any other, would, on the whole, tend unduly to hamper subsequent compilers and be contrary to public policy". The learned Judge

expresses no opinion upon this point, but we submit that whatever may be the consideration of public policy affecting law encyclopædias or arithmetics, there is no consideration of public policy, one way or the other, affecting the preparation and publishing of city directories. If it did not seem absurd to argue the question at all, it might be suggested that public policy was entirely subserved by the publication in each city of one city directory, provided that such directory was as accurate and comprehensive as was reasonably possible; that such a directory, if prepared and published by persons who like the complainants have grown up in the business, would probably be more skilfully and correctly prepared than the initial work of persons new to the business, and hence that public policy would require that so long as the existing city directory was satisfactory, it would be best to permit no other upon the market.

But as we have said, public policy, at least in the case of a directory, has clearly nothing to do with the question.

In closing this branch of the case, it is submitted that the dictum of the Court of Appeals in the Second Circuit, wholly unnecessary to the question before them, if it be permitted to become the ground for reversing the rules of law with regard to directories heretofore well established by the courts, cannot fail to work untold injury upon the large vested interests of directory publishers throughout the country, and we submit that this court, now the question is clearly before it for decision, should hesitate to take the "harsh and inequitable" view, as Judge Lacombe has characterized it, and should prefer the reasonable view of all the cases decided prior to the year 1903. We do not see how the reasonableness and sense of the old authorities can be more strongly put than Judge Lacombe has put it in his opinion in *Colliery Co.* v. *Ewald*, from which we quote as follows:

Speaking of what he calls the rule of *Moffatt* v. *Gill*, Judge Lacombe says:

> "The results which follow from it are most inequitable. A, we may assume, prepares an entirely new classified business directory of the city of New York, wholly from original investigation, and publishes the same. The undertaking is an enormous

one and can be accomplished only by the employment of hundreds of men at the cost of thousands of dollars. B undertakes thereafter to publish a directory of all the architects in New York City. To cull their names out of the world of business activity in such a hive of industry as this by original research would be a task nearly as difficult and costly as the one A undertook. But if defendant could take only the list of architects found in A's book, and then visit the places named therein to 'see whether the existing facts concur with the description', retaining the name, address, names of partners, etc., where such concurrence was found, and striking them out where death, removal, or withdrawal from business had eliminated them, B could prepare a 'Directory of Architects in New York City' at a merely trifling expenditure of time and trouble, because A had already done the work which B thus appropriated. Nevertheless, under *Moffatt* v. *Gill*, he could do just this without offence. *This is a harsh rule.*"

OPINION OF CIRCUIT COURT.

The learned Judge in his opinion in the court below thus states the position of the complainant and replies to it:

"The learned counsel for the complainant has presented a very able argument, insisting that the court should not allow the compiler of a directory to verify his own work by a former directory; that he should not be permitted to go to the original sources pointed out by the former directory and, after verifying the statement of the former directory, then to publish the names and addresses, if they are identical with those published in a former directory. But the action which we indicated in our former opinion amounts to something more than mere verification. For example, let us suppose that in July a publisher is obtaining information upon which he proposes to publish a directory. He takes an old directory which had been compiled the preceding January; in that directory it appears that John Smith was in January a lawyer at No. 1 Tremont street. With the information obtained in the January directory, the compiler of the July

directory goes to No. 1 Tremont street on July first, and finds that John Smith is a lawyer, that he has at that date an office at No. 1 Tremont street. The directory maker has a right to publish this information in his July directory; he cannot be precluded from so publishing it by the fact that the maker of the January directory has stated that the same facts existed in the preceding January. The maker of the January directory may or may not have stated the truth as to John Smith at that time; but the compiler of the July directory may, in his directory, state the facts as they exist on July first relating to John Smith, whether those same facts existed or not the previous January, and whether they were stated or not in the January directory. The compiler of the July directory is not merely verifying and quoting; he is obtaining facts from original sources, using the old directory only to guide him to these sources. Facts so obtained he may publish in his compilation; he cannot be prevented from such publication by the fact that the same things were true in January, and were stated by a former compiler."

It is submitted that the view herein expressed is unsound.

A directory of the kind now open before the court is the result of much labor and expense, and it is conceded that its contents and the information which it contains are copyrightable, and the copyrights are property.

It is true that the purchaser of this copyrighted property obtains, by virtue of his purchase, the right to make a fair use of this copyrighted property, but we submit that the use which the defendants have made, and the making of which the court below has approved, cannot be deemed a fair use.

The learned Judge speaks hypothetically of the use in July of copyrighted information obtained the preceding January, but if the argument is sound it leads to this dilemma,— either a rival directory publisher may make a use of his competitor's copyrighted work in July, which it would not be lawful for him to make in January, or else it would be lawful for him to make the same use in January which he may make in July.

If we adopt the first proposition, it amounts to a curtailment of the term of copyright much in excess of the statutory period, and we do not believe that it can be assumed that such was in reality the view of the learned judge.

It follows, therefore, that what it has been held might lawfully be done in July might equally well be done in January, when the copyrighted directory was first published. We are, therefore, confronted with the naked proposition that it is a fair use of a copyrighted directory to verify its contents, and if they are found correct to reprint them.

THE TRUE RULE.

It is a general rule of copyright protection that the facts and ideas expressed are not within the protection of the law, and that only the vehicle, namely, the language, is protected.

It is sought in this case by the defendants to deny that the language is within the protection of the law, and that if the facts or ideas have been come by with the assistance of the plaintiff's work, they may be clothed and used in the plaintiff's expression. This goes to the extent of denying protection both to ideas and to the vehicle.

It is submitted that the true rule of fair use is the one heretofore known to the law, namely, first, a right to use by admitted quotation with due credit given to the source, and this only to the extent known as fair or non-competing use, such as will not "rip the bowels" out of the plaintiff's work, or, second, by using it merely as an aid to the defendant's own ideas and method of treatment. The rule of fair use has never gone to the extent, and should never be allowed to go to the extent, of using the plaintiff's work verbatim, without acknowledgement, — nor as the substantial basis of the defendant's work, so that this latter shall be without originality, save such as may arise from mere verification. Can it be possible that one man's original work can become another man's original work by mere verification?

In this case the finding is that no effort was made to change the vehicle of expression, but the plaintiff's description of individuals with their business and residence was taken bodily in the plaintiff's language, and, being found to be true, was reproduced.

DOCTRINE OF FAIR USE.

In directory cases particularly, the only fair use, we submit, which can be made of an earlier work by a later compiler is as a test of completeness after an independent, exhaustive and original canvass has been made. Any other rule will throw the field open to every manner of fraud and labor-saving device. It will be possible for the incompetent and inexperienced man at small expense to produce a work in effect appropriating the expensive labor of competent and experienced men.

Nor does the rule work any injustice to new directory makers. After a canvass has been made, thoroughly and honestly, they may use an earlier work to test the fulness and completeness of their own. If, for instance, they find in the earlier work a list of twenty-five hundred lawyers, and their own work contains a list of only fifteen hundred, they will be assured that some portions of their work have been carelessly performed by employees. It will be possible for them to ascertain in what districts of the city and in what office buildings the work has been incompletely done, and probably upon what canvassers the blame should rest. The work in those districts and those buildings should be done anew, but independently, and not by taking copyrighted matter out of the plaintiff's book for the purpose of verification, and thereby saving the necessary and proper labor involved in making a complete directory.

It is said, in support of the position contended for by the defendant, that the use of a copyrighted work in the manner now complained of is a fair use, because the second directory maker "is not merely verifying and quoting, but is obtaining facts from original sources, using the old directory only to guide him to these sources".

It is submitted that this is not an accurate statement of what has occurred, unless the word "guide" is to receive a very different meaning from that which it has heretofore usually possessed. How can it be said, for example, that a man who takes my statement of a fact and verifies its accuracy by reference to authorities and then reprints it as his own has only been "guided"?

As has been above suggested, the compiler of the new directory may,

by comparing his work with existing directories, be guided with reference to certain portions of the city or certain lines of business, and thereby ascertain that his own work has been inadequate with regard to it, and such a use of existing directories is not complained of. But to palliate and justify the bodily taking over of material and substantial portions of the complainant's copyrighted information, however arrived at, is not in the ordinary use of English what we should describe as being the results merely of guidance. The expression used in various works "as a guide to original sources" means exactly what it says, a guide to those departments of a subject which have been omitted or inaccurately treated. It does not mean that the new compiler can place his hand in that of the author of the original work and blindfold go to the door to which he may be lead.

The rule contended for by the defendant sets a premium upon cheap and inefficient work by a later compiler. The more slipshod his own canvass, the greater right he acquires to use the results of the honest and thorough canvass of his predecessor.

Such a result seems obnoxious to the principles of simple business justice. It stamps with the approval of the court the unearned dollar and the unauthorized appropriation of the fruits of another's toil.

SECOND OBJECTION.

The Circuit Court, according to complainant's view, has also erred in the measure of the relief which it has granted. Upon the facts found by the Master three fictitious or trap names, deliberately inserted in the complainant's book, have been copied by the defendant; also twenty-nine names of persons living when complainant's book was canvassed, but dying before the alleged canvass or verification for defendant's book; also forty-six names of persons whose addresses are correctly given in complainant's book, but removed before the defendant's alleged canvass, and yet are given by him at their old addresses; also, thirty-six cases where a name occurs twice in the defendant's book, once in its correct form, and again in the incorrect form in which it appears in the complainant's book; and lastly (see Master's finding 9), many names and information trans-

ferred to all parts of its book, such names being many thousand in number.

The Circuit Court granted an injunction limited to the specific instances of copying found by the Master.

We submit that the proper action to be taken is that taken by his Honor Judge Brown, of this court, in *Social Register Association* v. *Murphy*, 128 Fed. Rep. 116, viz., that a general injunction should be granted with liberty to the defendant to apply when he shall have expunged all matter copied from the complainant's work. This general injunction should extend to all parts of defendant's book, except the street directory, as to which no copying has been proved.

SAMUEL J. ELDER,
ALEX. P. BROWNE,
of Counsel for Complainant,
APPELLANT.